Montana Legislative History

Chapter: 542 Session L: 1993
Bill Number: 368 House / Senate

Checklist of Bill History

- History and Final Status Sheet ■
- Fiscal Note ■
- Introduced Bill ■
- Final Version of Bill ■

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/16	Hearing Date(s): 2/19

Conference Committee

Hearing Date(s): N/A

Compiler Notes

Compiled by: Shane Cashin

Date: 6/1/2023

Notes: Executive action taken on 3/25.

2/18	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	34	16
2/22	3RD READING PASSED	29	19
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO LOCAL GOVERNMENT		
2/23	FIRST READING		
3/16	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	54	42
4/01	3RD READING FAILED	35	64
4/02	MOTION FAILED TO RECONSIDER PREVIOUS ACTION ON 3RD READING	48	50
4/02	MOTION CARRIED TO POSTPONE ACTION ON BILL UNTIL THE 76TH LEG. DAY	51	44
4/05	MOTION FAILED TO RECONSIDER PREVIOUS ACTION ON 3RD READING	47	51

SB 365 INTRODUCED BY B. BROWN

REQUIRE MOTORCYCLISTS OF ALL AGES TO WEAR PROTECTIVE HEADGEAR

BY REQUEST OF DEPARTMENT OF TRANSPORTATION

2/11	INTRODUCED
2/11	REFERRED TO HIGHWAYS & TRANSPORTATION
2/11	FIRST READING
2/18	HEARING
2/20	TABLED IN COMMITTEE

SB 366 INTRODUCED BY NATHE

ALLOW PROVISIONAL LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

2/11	INTRODUCED
2/11	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
2/11	FIRST READING
2/11	FISCAL NOTE REQUESTED
2/16	FISCAL NOTE RECEIVED
2/16	FISCAL NOTE PRINTED
2/17	HEARING
2/17	TABLED IN COMMITTEE

SB 367 INTRODUCED BY FORRESTER

REQUIRE A PERSON REPRESENTING TO THE PUBLIC THAT THEPERSON IS AN INDEPENDENT CONTRACTOR TO OBTAIN AN INDEPENDENT CONTRACTOR STATUS CARD FROM DEPARTMENT OF LABOR AND INDUSTRY

2/11	INTRODUCED
2/11	REFERRED TO BUSINESS & INDUSTRY
2/11	FIRST READING
2/11	FISCAL NOTE REQUESTED
2/17	HEARING
2/17	FISCAL NOTE RECEIVED
2/19	TABLED IN COMMITTEE
2/19	FISCAL NOTE PRINTED

SB 368 INTRODUCED BY DOHERTY, ET AL.

PROVIDE PARTIAL RETROCESSION OF STATE JURISDICTION ON FLATHEAD RESERVATION

2/11	INTRODUCED

2/11	REFERRED TO JUDICIARY		
2/11	FIRST READING		
2/11	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/22	2ND READING PASSED	34	12
2/23	3RD READING PASSED	40	9
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO JUDICIARY		
2/23	FIRST READING		
3/16	HEARING		
3/25	COMMITTEE REPORT-BILL NOT CONCURRED AS AMENDED		
3/26	MOTION FAILED TO REJECT ADVERSE COMMITTEE REPORT		
3/26	ADVERSE COMMITTEE REPORT ADOPTED (BILL RETURNED TO SENATE)	52	47
4/19	RECONSIDERED PREVIOUS ACTION AND REQUESTED BILL FROM SENATE FOR RECONSIDERATION		
	SENATE		
4/19	ACCEDED TO HOUSE REQUEST AND RETURNED BILL TO HOUSE FOR RECONSIDERATION	49	0
	HOUSE		
4/19	ON MOTION RULES SUSPENDED TO ALLOW BILL ON 2ND AND 3RD READING THIS DAY		
4/19	2ND READING CONCURRED AS AMENDED	95	2
4/19	3RD READING CONCURRED	96	3
	RETURNED TO SENATE WITH AMENDMENTS		
4/20	ON MOTION RULES SUSPENDED TO PRINT AND PLACE ON 2ND READING THIS DAY	49	0
4/20	2ND READING AMENDMENTS CONCURRED	49	0
4/20	ON MOTION RULES SUSPENDED TO ALLOW BILL ON 3RD READING THIS DAY	48	0
4/20	3RD READING AMENDMENTS CONCURRED	47	0
4/23	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR CHAPTER NUMBER 542 EFFECTIVE DATE: 04/24/93		

SB 369 INTRODUCED BY REA, ET AL.

ALLOW SALE OF CERTAIN PESTICIDES FOR UP TO 6 YEARS FROM DATE DISTRIBUTION IS TERMINATED

2/11	INTRODUCED		
2/11	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/11	FIRST READING		
2/15	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	48	0
2/19	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/23	FIRST READING		
3/04	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	93	5

SENATE BILL NO. 368

INTRODUCED BY DOHERTY, YELLOWTAIL, TOOLE, HARPER, LYNCH, REAM, DRISCOLL, RANEY, HALLIGAN, D. BROWN, GALVIN, BARDANOUVE, RUSSELL, HARRINGTON, BROOKE, VAN VALKENBURG, CHRISTIAENS, PECK, RYAN, DOWELL, MENAHAN, SWANSON, WANZENRIED, WHALEN, KADAS, MCCARTHY, BARNHART, DOLEZAL, NATHE, MCCULLOCH, STRIZICH, FRANKLIN, SCHWINDEN, L. NELSON, STOVALL, SQUIRES, BLAYLOCK

IN THE SENATE

FEBRUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 40; NOES, 9.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 26, 1993	COMMITTEE RECOMMEND BILL BE NOT CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	RETURNED TO SENATE WITH AMENDMENTS.
APRIL 19, 1993	ON MOTION, PREVIOUS ACTION RECONSIDERED.

IN THE SENATE

APRIL 19, 1993 ON MOTION, RETURNED TO HOUSE.

IN THE HOUSE

APRIL 19, 1993 ON MOTION, RULES SUSPENDED TO ALLOW SECOND AND THIRD READING AND TRANSMITTAL ON THIS DAY.

SECOND READING, CONCURRED IN AS AMENDED.

THIRD READING, CONCURRED IN. AYES, 96; NOES, 3.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 20, 1993 ON MOTION, RULES SUSPENDED TO PLACE ON SECOND AND THIRD READING THIS DAY.

SECOND READING, AMENDMENTS CONCURRED IN.

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 368

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT AGREEING TO THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Public Law 280 was enacted by Congress in 1953 during the era of federal Indian policy that was directed at terminating the historical federal trust relationship owed to Indian tribes and at assimilating Indians into the mainstream; and

WHEREAS, in an effort to further the federal termination policy, in 1963, the Montana Legislature enacted Public Law 280 enabling legislation in order to allow consenting Montana tribes to subject their members to limited, concurrent state jurisdiction pursuant to Public Law 280; and

WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and

WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than $250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and

WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of approximately $70 million, including federally contracted programs, and oversees one of the largest tribal law enforcement and tribal justice systems in the state and nation; and

WHEREAS, since 1970, all branches of the federal government and every American president has officially embraced the policy of encouraging tribal

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phasein approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction. (1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may ~~within--2--years--from--the--date--of--the---governor's proclamation~~ withdraw ~~their~~ its consent to be subject to the criminal ~~and/or~~ or civil jurisdiction of the state of Montana, by appropriate resolution, and within ~~60--days~~ 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18

U.S.C. 1153, or crimes in which the defendant is not an Indian, as defined in 25 U.S.C. 1301.

(b) in civil jurisdiction, to tribal resumption of those civil areas delineated in tribal ordinance 40-A (revised) on which the tribal government and the governor agree."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0368, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act agreeing to the partial withdrawal of the consent of the Confederated Salish and Kootenai tribes to Public Law 280 jurisdiction on the Flathead Reservation.

ASSUMPTIONS:
1. It is assumed that the additional workload imposed upon the Attorney General's staff and potential travel expenses can be absorbed within the current level budget for the Department of Justice.

FISCAL IMPACT:
None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The bill provides the potential for some reduced county law enforcement responsibilities in impacted areas.

Dave Lewis 2-17-93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Doherty 2/17/93
STEVE DOHERTY, PRIMARY SPONSOR DATE

Fiscal Note for SB0368, as introduced
SB 368

APPROVED BY COMMITTEE
ON JUDICIARY

Senate BILL NO. 368

INTRODUCED BY [signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT AGREEING TO THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Public Law 280 was enacted by Congress in 1953 during the era of federal Indian policy that was directed at terminating the historical federal trust relationship owed to Indian tribes and at assimilating Indians into the mainstream; and

WHEREAS, in an effort to further the federal termination policy, in 1963, the Montana Legislature enacted Public Law 280 enabling legislation in order to allow consenting Montana tribes to subject their members to limited, concurrent state jurisdiction pursuant to Public Law 280; and

WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and

WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than $250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and

WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of approximately $70 million, including federally contracted programs, and oversees one of the largest tribal law enforcement and tribal justice systems in the state and nation; and

WHEREAS, since 1970, all branches of the federal government and every American president has officially embraced the policy of encouraging tribal

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phasein approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction. (1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may ~~within--2--years--from--the--date--of--the---governor's proclamation~~ withdraw ~~their~~ its consent to be subject to the criminal ~~and/or~~ or civil jurisdiction of the state of Montana, by appropriate resolution, and within ~~60--days~~ 1 year after receipt of ~~such~~ the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18

U.S.C. 1153, or crimes in which the defendant is not an Indian, as defined in 25 U.S.C. 1301.

(b) in civil jurisdiction, to tribal resumption of those civil areas delineated in tribal ordinance 40-A (revised) on which the tribal government and the governor agree."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-End-

Senate BILL NO. 368

INTRODUCED BY [signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT AGREEING TO THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Public Law 280 was enacted by Congress in 1953 during the era of federal Indian policy that was directed at terminating the historical federal trust relationship owed to Indian tribes and at assimilating Indians into the mainstream; and

WHEREAS, in an effort to further the federal termination policy, in 1963, the Montana Legislature enacted Public Law 280 enabling legislation in order to allow consenting Montana tribes to subject their members to limited, concurrent state jurisdiction pursuant to Public Law 280; and

WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and

WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than $250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and

WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of approximately $70 million, including federally contracted programs, and oversees one of the largest tribal law enforcement and tribal justice systems in the state and nation; and

WHEREAS, since 1970, all branches of the federal government and every American president has officially embraced the policy of encouraging tribal

LC 1346/01

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phasein approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction. (1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may ~~within--2--years--from--the--date--of--the---governor's proclamation~~ withdraw their its consent to be subject to the criminal ~~and/~~or or civil jurisdiction of the state of Montana, by appropriate resolution, and within ~~60--days~~ 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18

U.S.C. 1153, or crimes in which the defendant is not an Indian, as defined in 25 U.S.C. 1301.

(b) in civil jurisdiction, to tribal resumption of those civil areas delineated in tribal ordinance 40-A (revised) on which the tribal government and the governor agree."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 368 (third reading copy -- blue) be not concurred in as amended .

Signed: Russell C. Fagg
Russ Fagg, Chair

And, that such amendment read:

1. Page 4, line 23.
Following: "writing."
Insert: "The governor shall confer with affected local governments and residents before issuing a proclamation."

2. Page 5, line 6.
Following: "agree."
Insert: "The governor shall confer with affected local governments and residents before issuing a proclamation."

-END-

SB 368

HOUSE 3/25/93

Committee Vote:
Yes 8, No 18.

671415SC.Hss

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 368
Representative Toole

April 19, 1993 11:47 am
Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 368 (third reading copy -- blue).

Signed: _____
Representative Toole

And, that such amendments to Senate Bill 368 read as follows:

1. Title, line 4.
Strike: "AGREEING TO"
Insert: "PROVIDING FOR"

2. Page 1, line 10 through page 4, line 4.
Strike: preamble in its entirety
Insert: "WHEREAS, the Confederated Salish and Kootenai Tribes seek state approval to withdraw tribal consent and to partially retrocede from Public Law 280 jurisdiction on the Flathead Reservation in certain defined areas; and

WHEREAS, the State of Montana finds it appropriate at this time to consent to the resumption by the Confederated Salish and Kootenai Tribes of jurisdiction in those areas specifically provided for in this legislation.

THEREFORE, the Legislature of the State of Montana does hereby adopt this legislation to approve partial retrocession by the Confederated Salish and Kootenai Tribes."

3. Page 4, line 9 through page 5, line 6.
Strike: subsections (1) and (2) in their entirety
Insert: "(1) No sooner than 6 months after [the effective date of this act] and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of

ADOPT

REJECT

sb 368.1

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civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2)."

-END-

SB 368

HOUSE

SENATE BILL NO. 368

INTRODUCED BY DOHERTY, YELLOWTAIL, TOOLE, HARPER, LYNCH, REAM, DRISCOLL, RANEY, HALLIGAN, D. BROWN, GALVIN, BARDANOUVE, RUSSELL, HARRINGTON, BROOKE, VAN VALKENBURG, CHRISTIAENS, PECK, RYAN, DOWELL, MENAHAN, SWANSON, WANZENRIED, WHALEN, KADAS, MCCARTHY, BARNHART, DOLEZAL, NATHE, MCCULLOCH, STRIZICH, FRANKLIN, SCHWINDEN, L. NELSON, STOVALL, SQUIRES, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ASSERTING--TO~~ PROVIDING FOR THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

~~WHEREAS, Public Law 280 was enacted by Congress in 1953 during the era of federal Indian policy that was directed at terminating the historical federal trust relationship owed to Indian tribes and at assimilating Indians into the mainstream; and~~

~~WHEREAS, in an effort to further the federal termination policy, in 1963, the Montana legislature enacted Public Law 280 enabling legislation in order to allow consenting Montana tribes to subject their members to limited, concurrent state jurisdiction pursuant to Public Law 280; and~~

~~WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and~~

~~WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than $250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and~~

~~WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of~~

~~concurrent state jurisdiction pursuant to Public Law 280; and~~

~~WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and~~

~~WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than $250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and~~

~~WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of~~

~~approximately--$70--million,--including-federally-contracted programs,--and--oversees--one--of--the--largest--tribal--law enforcement-and-tribal-justice--systems--in--the--state--and nation;-and~~

~~WHEREAS,---since--1970,--all--branches--of--the--federal government--and--every--American--president--has--officially embraced----the-----policy-----of-----encouraging-----tribal self-determination,--and--pursuant--to--that--encouragement, approximately-30-Indian-tribes-across-the-United-States-have withdrawn-from-Public-Law-280-jurisdiction;-and~~

~~WHEREAS,-the-Montana-legislature-recognizes-and-supports federal--policy--encouraging--self-determination--for-Indian tribal-governments-in-Montana-and-across-the--United--States and--recognizes--the-current-capability-and-resources-of-the Confederated--Salish--and--Kootenai---Tribes---to---reassume jurisdiction-over-its-members;-and~~

~~WHEREAS,--to-further-tribal-self-determination,-Congress preempted-Public-Law-280-jurisdiction-in-the-area-of--Indian child--welfare--by--enacting-the-Indian-Child-Welfare-Act-in 1978,--which--recognized--tribal--court--primacy--over---the adoption-of-Indian-children;-and~~

~~WHEREAS,-the-Confederated-Salish-and-Kootenai-Tribes-now seeks-state-agreement-to-the-withdrawal-of-tribal-consent-to and--the--partial-retrocession-of-the-Tribes-from-Public-Law 280-jurisdiction;-and~~

~~WHEREAS,-the-Confederated--Salish--and--Kootenai--Tribes believes--that--resumption--of--jurisdiction--by--the-Tribes should-be-implemented-through-a-phasein-approach-to-ensure-a smooth-transition.~~

~~THEREFORE,-the-Legislature-of-the-State-of-Montana-finds it--appropriate--to--agree--to---the---resumption---by---the Confederated---Salish---and--Kootenai--Tribes--of--exclusive adjudicatory--jurisdiction--in--the--named--areas--of--civil jurisdiction-and-in--misdemeanor--types--of--crimes--and--to endorse---a---phased-in---approach--to--provide--an--orderly resumption-of-jurisdiction-by-the-Tribes-over-its-members.~~

WHEREAS, THE CONFEDERATED SALISH AND KOOTENAI TRIBES SEEK STATE APPROVAL TO WITHDRAW TRIBAL CONSENT AND TO PARTIALLY RETROCEDE FROM PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION IN CERTAIN DEFINED AREAS; AND

WHEREAS, THE STATE OF MONTANA FINDS IT APPROPRIATE AT THIS TIME TO CONSENT TO THE RESUMPTION BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF JURISDICTION IN THOSE AREAS SPECIFICALLY PROVIDED FOR IN THIS LEGISLATION.

THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES HEREBY ADOPT THIS LEGISLATION TO APPROVE PARTIAL RETROCESSION BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction. ~~(1)~~ Any ~~Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their~~ its consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60 days 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

~~(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:~~

~~(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing; THE GOVERNOR SHALL CONFER WITH AFFECTED LOCAL GOVERNMENTS AND RESIDENTS BEFORE ISSUING A PROCLAMATION; Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18 U.S.C. 1153, or crimes in which the defendant is not an Indian, as defined in 25 U.S.C. 1301;~~

~~(b) in civil jurisdiction, to tribal resumption of those civil areas delineated in tribal ordinance 40-A (revised) on which the tribal government and the governor~~

agree; ~~THE GOVERNOR SHALL CONFER WITH AFFECTED LOCAL GOVERNMENTS AND RESIDENTS BEFORE ISSUING A PROCLAMATION;~~ (1) NO SOONER THAN 6 MONTHS AFTER [THE EFFECTIVE DATE OF THIS ACT] AND AFTER CONSULTING WITH LOCAL GOVERNMENT OFFICIALS CONCERNING IMPLEMENTATION, THE CONFEDERATED SALISH AND KOOTENAI TRIBES MAY, BY TRIBAL RESOLUTION, WITHDRAW CONSENT TO BE SUBJECT TO THE CRIMINAL MISDEMEANOR JURISDICTION OF THE STATE OF MONTANA. WITHIN 6 MONTHS AFTER RECEIPT OF THE RESOLUTION, THE GOVERNOR SHALL ISSUE A PROCLAMATION TO THAT EFFECT.

(2) THE CONFEDERATED SALISH AND KOOTENAI TRIBES MAY, BY SEPARATE RESOLUTION, WITHDRAW CONSENT TO BE SUBJECT TO THOSE AREAS OF CIVIL JURISDICTION OF THE STATE OF MONTANA THAT ARE DELINEATED IN TRIBAL ORDINANCE 40-A (REVISED AND ENACTED MAY 5, 1965). THE WITHDRAWAL IS LIMITED TO THOSE DELINEATED AREAS OF CIVIL JURISDICTION AGREED UPON IN WRITING BY THE GOVERNOR AFTER CONSULTATION WITH THE ATTORNEY GENERAL AND OFFICIALS OF AFFECTED LOCAL GOVERNMENTS. THE TRIBES SHALL INITIATE THIS PROCESS BY SENDING A CERTIFIED LETTER TO THE GOVERNOR. AFTER CONSULTATION AND EXECUTION OF A WRITTEN AGREEMENT BETWEEN THE GOVERNOR AND THE TRIBES, THE AGREED-UPON CIVIL AREAS MUST BE INCORPORATED INTO A TRIBAL RESOLUTION TO BE ENACTED BY THE TRIBES. WITHIN 6 MONTHS AFTER RECEIPT OF THE TRIBAL RESOLUTION, THE GOVERNOR SHALL ISSUE A PROCLAMATION TO THAT EFFECT THAT REFLECTS THE TERMS

OF THE WRITTEN AGREEMENT.

(3) SUBSECTIONS (1) AND (2) DO NOT ALTER THE EXISTING JURISDICTION OR AUTHORITY OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OR THE STATE OF MONTANA, EXCEPT AS EXPRESSLY PROVIDED FOR IN SUBSECTIONS (1) AND (2)."

NEW SECTION. **Section 2.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993, at 10:01 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SJR 13
	SB 368
	SB 400
	SB 406
Executive Action:	SB 41
	SB 246
	SB 277
	SB 304
	SB 4
	SB 5
	SB 242
	SB 333
	SB 362
	SB 386

HEARING ON SJR 13

Opening Statement by Sponsor:
Senator Nathe, District 10, said SJR 13 is a resolution granting the Gambling Control Division of the Department of Justice greater flexibility in interpreting the Indian Gaming Regulatory Act, State Gambling Policy, and the State Gambling Laws in negotiating gaming compacts with Montana Tribal Governments.

Proponents' Testimony:
Caleb Shields, Chairman of the Fort Peck Tribal Executive Board, read from prepared testimony. (Exhibit #1)

Wayne Goss, Blackfeet Tribe, read from prepared testimony. (Exhibit #2)

Lawrence Kenmille, Vice President of the Confederated Salish and Kootenai Tribes, said legally the State of Montana has the opportunity, through existing statutes, to provide enough flexibility to negotiate. Mr. Kenmille said the problem was the State refuses to recognize that flexibility. Mr. Kenmille said the Confederated Salish and Kootenai Tribes were in support of SJR 13 even though the state already has the flexibility to negotiate. Mr. Kenmille told the Committee SJR 13 would help Indians and non-Indians alike. SJR 13 would also help the economy on the reservations.

Representative Schwinden, District 20, reiterated Mr. Shields testimony about the importance of negotiated agreements in compacts.

Representative Gervais, District 9, said if SJR 13 helps take some people off welfare it should be passed. SJR 13 would also help the economics on the reservation by requiring the state to deal in good faith with the tribes.

Deanne Sandholm, Assistant Attorney General from the Attorney General's Office, said the state has been involved in the negotiations of gambling compacts with the tribes and has taken its directions from legislative policy as it relates to gambling. Article 3, section 9, of the Constitution prohibits all forms of gambling unless it is explicitly authorized by the legislature or by initiative or referendum. Section 23-5-111 provides that the law must be strictly construed as to what that means. Ms. Sandholm said the State's position is that it cannot include forms of gambling in the compacts that are not expressly allowed by state statute. Ms. Sandholm told the Committee the state was willing to discuss a modification of conditions under which types of games could be played. It is the position of the Attorney General that a joint resolution, directing the gambling control division or the state negotiating team, to use greater flexibility in interpreting a state policy relating to gambling under the gambling laws is really not needed.

Opponents' Testimony:
Jim Morsette, Chippewa Cree Tribe, read from prepared testimony. (Exhibit #3)

Gloria Hermanson, Don't Gamble with the Future, said urging flexibility in negotiating gambling compacts with Montana Tribes helps set a tone and down the road possible may cause inadvertent precedence for gambling to expand throughout the state. Ms. Hermanson said it was important to maintain a firm, reasonable standard applicable statewide. Ms. Hermanson urged the Committee to take care to minimize unintended consequences.

Questions From Committee Members and Responses:
Senator Blaylock asked Senator Nathe why the tribes should have different gambling laws than the rest of the state. Senator Nathe said there were seven semi-sovereign nations within Montana, a sovereign state. Sovereignty was limited by the United States Constitution, and their sovereignty was limited by the actions of the United States Government because they were created under treaties signed by a United States President and ratified by the United States Senate. Therefore, there were differences. Senator Nathe said the tribes were frustrated by the term policy, which was the reason SJR 13 came about. The Indian Gambling Regulatory Act was passed by the United State Congress, which provided a mechanism for negotiations between states and tribes, to respect the sovereignty of both entities. The act also provided an escape valve of going to federal negotiators or mediators if the states and tribes could not agree. Another provision says the tribes could pursue their differences in the federal court system, which several of the tribes have done. SJR 13 was an attempt to not have to go to court, it was an attempt to recognize the sovereignty of the tribes and the sovereignty of the State of Montana.

Senator Towe told the Committee the tribes were frustrated because, under the Indian Gambling Regulatory Act, the state has no authority to regulate the stakes. If the state authorizes poker, they can not control poker on the reservation. If the state authorizes video gaming machines, the state can not regulate the amount of machines or limit the stakes. However, the state policy teams was interpreting the Act differently.

Senator Towe asked Ms. Sandholm to comment on his statement. Ms. Sandholm said within the negotiated compact, the state has the ability to agree to those provisions within the negotiated compact. Ms. Sandholm said the state directive was mandated by public policy, and it was difference in interpretation.

Senator Towe told Ms. Sandholm she was wrong.

Senator Blaylock asked Senator Nathe about the casinos. Senator

Nathe said the casinos would be controlled by the tribe. There would not be alcoholic beverages sold in the casinos, which would place them at a disadvantage compared to casinos where alcoholic beverages could be sold

Senator Crippen asked Senator Nathe about the classes of gambling. Senator Nathe told the Committee class 1 gambling was traditional indian games, which were regulated only by the tribe, class 2 gambling was bingo, and class 3 gambling was all other forms of gambling.

Senator Crippen asked Senator Nathe about the percentage of the amount of gambling done by Native Americans versus tourists. Senator Nathe said that he did not know.

Closing by Sponsor:
Senator Nathe closed.

HEARING ON SB 368

Opening Statement by Sponsor:
Senator Doherty, District 20, said SB 368 deals with partial retrocession of the Confederated Salish and Kootenai Tribes. Senate Bill 368 would provide jurisdiction for the tribes after consultation with the Governor and the Attorney General in certain criminal matters. SB 368 would also provide jurisdiction for the tribes after consultation and agreement with the Governor for civil matters. Senator Doherty said partial retrocession was a reasonable and prudent thing to do.

Proponents' Testimony:
Pat Smith, Staff Attorney for the Confederated Salish and Kootenai Tribes, said the tribes were asking to be allowed to reassume misdemeanor jurisdiction. The issue of felonies was taken out of SB 368 because a lot of concerns were expressed by counties and the state. Mr. Smith told the Committee Lake County indicated their willingness to transfer jurisdiction in the area of misdemeanors, therefore SB 368 was drafted to focus on the misdemeanor situation. Mr. Smith said the tribes want flexibility to negotiate, in the future, on jurisdiction of felonies and in civil areas.

Rep. Gervais, District 9, supported SB 368.

Jim Morsette, Chippewa Cree Tribe, supported SB 368.

Fred Mann, Confederated Salish and Kootenai Tribal Councilman, told the Committee SB 368 was an important issue and urged support. Mr. Mann said the majority of the tribal members also support SB 368.

Magel Bird, Chief Tribal Prosecutor for the Salish Tribal Kootenai Court, told the Committee according to Montana Board of Crime Control figures, the tribe would assume a 50% to 75% increase in their caseload to accommodate SB 368, which the tribe was prepared to do. The tribal court handles approximately 400 misdemeanor cases. Last year, 24 of the cases were felony type cases. The staff consists of Chief Judge, who supervises three associate judges, two prosecuting attorneys, two defense attorneys, and two lay advocates. The law enforcement department consists of eleven officers, 9 of which are post certified, meaning they are eligible for cross deputization. The jail houses 22 prisoners. The jail currently averages between five and eight prisoners a day, therefore the jail could accommodate an increase.

Ms. Bird said the tribal services were culturally relevant to their people, which was very important. 90% of the cases handled through the Salish Kootenai Tribal Courts were alcohol related. The tribe has services to best meet the needs of those people going through the system. The tribe has a strong tribal alcoholism and mental health program. The tribal court has alternate sentencing which includes house arrest and community service. The tribe has an adult probation officer who is a tribal member. Ms. Bird told the Committee tribal services better meet the needs of Indian people, than those services available through Lake County which are staffed by non-Indian people.

The tribal court provides a greater due process for the Indian people, which was an important factor. Ms. Bird said when an Indian person comes into the tribal court system, they were guaranteed the right to representation within three days. Ms. Bird said the tribe was willing to negotiate a time frame in which to assume felony jurisdiction. Ms. Bird told the Committee the tribe currently handles some felony type crimes. The tribe has class A, B, and C offenses. Class C offenses were comparable to felony crimes. A process has been established to evaluate each person coming into the system. The court looks at their criminal history, age, ability to be rehabilitated, ties to the reservation, and numerous factors before it would determine whether the tribal court jurisdiction would be appropriate. Ms. Bird said the tribe has financial resources to expand the system, if that is needed. Ms. Bird said the tribe was willing, able, competent, and professional; and it was time to give back criminal jurisdiction over the Indian people to the Salish Kootenai Tribes.

Beth Baker, Department of Justice, told the Committee it was important that the Governor would consult with all the residents of the Flathead Reservation and the local government before entering into the agreement. Ms. Baker said the Attorney General's Office was willing to go beyond the requirements of SB 368 and provide whatever assistance they could in the process.

Joseph McDonald, President of the Confederated Salish and Kootenai College, supported SB 368.

Jack Muso, Adult Probation Officer of the Confederated Salish and Kootenai Tribe, supported SB 368.

Ruth Swaney, of the Confederated Salish and Kootenai Tribe, supported SB 368.

Mike Finley, Confederated Salish and Kootenai Tribe, supported SB 368.

Rhonda Lankford, Confederated Salish and Kootenai Tribe, supported SB 368.

Opponents' Testimony:
Joe Delbers, Lake County Sheriff and Coroner, opposed SB 368.

Gerald Newgard, Lake County Commission, read from prepared testimony. (Exhibit #4)

Larry Nisrek, Lake County Commission, said his concern with SB 368 was the effectiveness of law enforcement and prosecutions. Mr. Nisrek told the Committee that partial retrocession cannot be undone. The conclusion of partial retrocession would be full retrocession. Mr. Nisrek said if SB 368 was enacted, full retrocession would occur. SB 368 creates vagueness about law enforcement.

Craig Hoppe, Montana Magistrates Association, read from a written statement from Gregory Mohr. (Exhibit #5) Mr. Hoppe submitted written testimony. (Exhibit #6)

Frank Stalk told the Committee that he lives on the reservation. Mr. Stalk told the Committee to think about how SJR 13 would affect members and nonmembers of the tribe who were married, in situations like divorce.

Questions From Committee Members and Responses:
NONE

Closing by Sponsor:
Senator Doherty told the Committee the current law of Montana for six reservations was total retrocession. SB 368 would allow for partial retrocession and would recognize the jurisdiction of the Confederated Salish and Kootenai Tribe. SB 368 would partially pull back the concurrent jurisdiction which currently exists on the reservation, with the State of Montana. Senator Doherty said an important part of SB 368 was that the Attorney General and Governor would negotiate the agreements. After consultation and negotiations, an agreement would be struck, only if all parties

agree. The tribe recognizes there are issues that need to be worked out with the Governor and the Attorney General. Senator Doherty said change was scary, but SB 368 was necessary and needed. The Confederated Salish and Kootenai Tribes have shown that they deserve to be treated in this fashion. It is time the State of Montana treated the Confederated Salish and Kootenai Tribe right and pass SB 368.

HEARING ON SB 400

Opening Statement by Sponsor:
Senator Nathe, District 10, said SB 400 would immunize conservation district supervisors from suit.

Proponents' Testimony:
Mike Volesky, Montana Association of Conservation Districts, said SB 400 was a public policy bill. Mr. Volesky said it would be good public policy to make public officials immune from suit for damages arising from the lawful discharge of their official duties. The Board of Supervisors for the conservation districts would not be immune from suit under SB 400. Mr. Volesky said people are becoming wary of serving and carrying out their duties as conservation district supervisors because of the risk of liability. Mr. Volesky said there had been no cases, but if there was, Montana would not be able to find a conservation district supervisor. Mr. Volesky said conservation district supervisors are not covered under the Tort Claims Act because conservation districts are subdivisions of the government. Mr. Volesky urged the Committee to support SB 400.

Steve Schmitz, Department of Natural Resources and Conservation, read from prepared testimony. (Exhibit #7)

Jamie Doggett, Conservation District Supervisor, supported SB 400.

Jan Holzer supported SB 400.

Bob Stephens, Montana Grain Growers Association, supported SB 400.

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, (MTLA) told the Committee the MTLA opposed SB 400 because the immunity extends to contracts as well as torts. Mr. Hill said conservation districts would not be able to sue their supervisors, because of sub-section 76-15-403 and 76-15-404, regarding the conservation district needing to obtain consent agreements and cooperation. Mr. Hill said it was counter productive to extend immunity, especially contract immunity, to a supervisor who was authorized

to enter into those agreements.

Questions From Committee Members and Responses:
Senator Towe suggested expanding the definition in section 2-9-101 to include conservation district supervisors. Senator Towe said the definition would automatically bring them under the coverage of the state and all the other provisions would automatically apply.

Senator Nathe agreed if they would be covered individually from lawsuits.

Senator Towe asked Mr. Hill about making conservation districts a governmental entity so they would be covered and employees would be covered under section 2-9-305. Mr. Hill said he would not object.

Senator Nathe told the Committee that conservation district supervisors are not employees, they are elected officials.

Senator Nathe asked Senator Towe about section 2-9-305 and section 2-9-101. Senator Towe said 2-9-305 was the operative section. 2-9-101 was the definition section.

Senator Towe said he would check to see if the supervisors could be covered in either section.

Closing by Sponsor:
Senator Nathe told the Committee that conservation district supervisors do need coverage.

Discussion:
Chair Yellowtail asked Senator Nathe and Senator Towe to work on SB 400.

HEARING ON SB 406

Opening Statement by Sponsor:
Senator Bartlett, District 23, told the Committee that SB 406 proposes changes in the law relating to the crime of domestic abuse and temporary restraining orders issued in domestic abuse situations. In 1981, the legislature recognized that laws did not adequately protect victims of spouse abuse and made it possible for a victim, who was not involved in a divorce or legal separation, to seek a restraining order. In 1985, the legislature established domestic abuse as a crime as well as the violation of a restraining order. Self help temporary restraining orders were authorized. Justice and District Courts were empowered to issue temporary restraining orders. In addition, the protection of restraining orders were extended to people who were cohabiting or who had in the past cohabited. The

definition of what constituted sufficient grounds for a victim to seek protection was expanded. In 1989, City Courts were added to the Justice and District Courts as locations where domestic violence restraining orders could be obtained. In 1991, the threat of bodily harm was included as a sufficient grounds for a domestic abuse victim to petition for a restraining order. Senator Bartlett said SB 406 was another step in the evolutionary process. SB 406 came out of experiences of people who work daily with the domestic abuse statutes. Their experience identified the area of the laws which were inadequate or insufficient to accomplish the state's purpose, mainly the protection of victims of domestic abuse. Section 2 of SB 406 would broaden the crime of domestic abuse, increase the penalties, and address counseling for perpetrators. Section 1 of SB 406 would broaden the class of people who may seek protection through restraining orders. Sections 3 through 5 change the language in the related criminal statutes to match the changes instituted in Sections 1 and 2.

Proponents' Testimony:
Judith Wang, Missoula City Attorney, urged the Committee to favorably consider SB 406. Ms. Wang said SB 406 allows for judges, in appropriate circumstances, to permanently enjoin the defendant from contact with the victim. SB 406 would allow for permanent injunctions, in certain circumstances, to protect victims that were very afraid. SB 406 would require proof of abuse before a restraining order was ordered. Mr. Wang said the definition of who would be eligible for a restraining order would be expanded to include all family members and those people involved in an ongoing, intimate relationship. The counseling provision in SB 406 would allow a judge to order more counseling, if after a minimum of 25 hours of counseling, the counselor felt the defendant was still violent and in need of more counseling. Ms. Wang urged the Committee to support SB 406.

Amy Pfeifer, Womens Law Section, read from prepared testimony. (Exhibit #8) Ms. Pfeifer submitted testimony from Janet Cahill. (Exhibit #9)

Diane Sands, Montana Womens Lobby, supported SB 406. Ms. Sands submitted testimony from Melody Brown. (Exhibit #10)

Carl Ipson, Police Officer in Missoula, supported SB 406.

Craig Hoppe, Montana Magistrate Association, supported SB 406.

Opponents' Testimony:
Kathleen Fleury told the Committee she had concerns about the language in SB 406. Ms. Fleury said anyone would be able to make an allegation and sign an affidavit. Ms. Fleury said many allegations are untrue and made out of vindictiveness. Ms. Fleury asked for a DO NOT PASS recommendation for SB 406.

Questions From Committee Members and Responses:
Senator Rye asked Senator Bartlett why the Clerk of Court from Yellowstone county was opposed to SB 406. Senator Bartlett said it was because of the additional workload.

Senator Franklin asked Ms. Wang to comment on the opponents testimony. Ms. Wang told the Committee that few people make frivolous complaints.

Senator Halligan asked Ms. Wang about the definition of partner. Ms. Wang said she tried to come up with a definition that the court could get some kind of grasp on. An ongoing, intimate relationship would be a relationship that continued for a period of time. Ms. Wang said the relationship could have been in the past or present.

Chair Yellowtail asked Ms. Pfeifer about the new definition of a family member. Ms. Pfeifer said a family member would include a member of a family that had an ongoing relationship with each other, for instance a mother and son, or a father and daughter.

Chair Yellowtail asked Ms. Wang about the intent of the definition of a family member. Ms. Wang said the intention was to include household members in addition to family members. For instance if an uncle was living in the home and abused his niece, he would be considered a member of the household, therefore he would be subject to the restraining order. However, if he did not live in the household, he would not be included. Ms. Lang said they wanted to expand the definition, but did not want to include all of an extended family. The definition would only include someone who lived in the household.

Senator Bartlett asked Ms. Wang if anyone was sent to prison for a parole violation because of a false accusation. Ms. Wang said no.

Closing by Sponsor:
Senator Bartlett told the Committee there were areas in the domestic violence statute that did not cover certain situations, therefore SB 406 was drafted. Senator Bartlett urged a DO PASS recommendation for SB 406.

EXECUTIVE ACTION ON SB 303

Motion/Vote:
Senator Grosfield moved to TABLE SB 303. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 4

Motion/Vote:

Senator Rye moved SB 4 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 5

Motion/Vote:
Senator Franklin moved SB 5 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 242

Motion/Vote:
Senator Blaylock moved SB 242 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 41

Motion:
Senator Crippen moved to REMOVE SB 41 from the table.

Discussion:
Senator Crippen told the Committee the sponsor of SB 41, Senator Burnett, wanted an adverse committee report so he could argue the bill on the floor.

Senator Halligan told the Committee that SB 41 was a terrible bill.

Senator Crippen told the Committee he would carry the DO NOT PASS recommendation on the Floor.

Vote:
The motion to remove SB 41 from the table CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Crippen moved SB 41 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 246

Motion/Vote:

Senator Harp moved to TABLE SB 246. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 277

Motion/Vote:
Senator Halligan moved to TABLE SB 277. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 304

Motion/Vote:
Senator Harp moved to TABLE SB 304. The motion CARRIED with Senator Rye voting NO.

EXECUTIVE ACTION ON SB 333

Motion:
Senator Harp moved SB 333 DO PASS.

Motion:
Senator Crippen made a SUBSTITUTE motion to TABLE SB 333.

Discussion:
Senator Rye told the Committee he would like SB 333 to pass, if not, he asked for a DO NOT PASS recommendation.

Senator Crippen WITHDREW his motion to table SB 333.

Motion/Vote:
Senator Halligan made a SUBSTITUTE motion to recommend SB 333 DO NOT PASS. The motion CARRIED with Senators Rye and Harp voting NO.

EXECUTIVE ACTION ON SB 336

Discussion:
Chair Yellowtail explained amendment sb033601.avl. (Exhibit #11)

Motion/Vote:
Senator Harp moved to AMEND SB 336. The motion CARRIED UNANIMOUSLY.

Vote:

Senator Grosfield asked Ms. Lane to draft an amendment to take out the indexing in SB 336.

Senator Crippen told the Committee he would oppose SB 336.

Motion:
Senator Harp moved SB 336 DO NOT PASS.

Discussion:
Chair Yellowtail told the Committee he would rather have SB 336 Tabled.

Motion:
Senator Harp made a substitute motion to TABLE SB 336.

Discussion:
Chair Yellowtail told the Committee if SB 336 was not passed, judges salaries would remain frozen until the next biennium. The judges are only asking to be treated as other state employees, which was fair and reasonable.

Senator Crippen asked Senator Halligan about the Governor's salary. Senator Halligan said the Governor's salary was increased when the state employees salaries were increased.

Chair Yellowtail said SB 336 would be held until further information was made available concerning salary increases for elected officials

Senator Harp WITHDREW his motion to TABLE SB 336.

EXECUTIVE ACTION ON SB 386

Motion/Vote:
Senator Harp moved SB 386 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 362

Motion/Vote:
Senator Halligan moved SB 362 DO PASS. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:48 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 4 (first reading copy -- white), respectfully report that Senate Bill No. 4 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

411338SC.SAN

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 4 (first reading copy -- white), respectfully report that Senate Bill No. 4 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

411338SC.SAN

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 5 (first reading copy -- white), respectfully report that Senate Bill No. 5 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 41 (first reading copy -- white), respectfully report that Senate Bill No. 41 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

411337SC.San

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 242 (first reading copy -- white), respectfully report that Senate Bill No. 242 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 333 (first reading copy -- white), respectfully report that Senate Bill No. 333 do not pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 362 (first reading copy -- white), respectfully report that Senate Bill No. 362 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

AOJ Amd. Coord.
Sec. of Senate

411336SC.San

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 386 (first reading copy -- white), respectfully report that Senate Bill No. 386 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

411335SC.San

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-19-93
BILL NO. SJR13

Testimony of

Caleb Shields, Chairman

Assiniboine and Sioux Tribes
of the
Fort Peck Indian Reservation, Montana

Before the

Senate Judiciary Committee

State of Montana Legislature

Re S.J.R. 13

February 19, 1993

Chairperson and members of the Committee, I am Caleb Shields, Chairman of the Fort Peck Tribal Executive Board. I am very pleased to appear here today on behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation to discuss legislation to require the State to enter into compacts with tribes that broaden the types of Indian gaming in Montana. We greatly appreciate the introduction of this legislation by Senator Nathe and Representative Schwinden.

The Assiniboine and Sioux Tribes have concluded a gaming compact with Montana, as well as two amendments to it during this past year. The original gaming compact authorized our Tribes to operate gambling machines and simulcast horse racing. Our main purpose in entering into this initial compact was to protect existing gaming machines already operating on our Reservation: (1) at the casino operated by the wolf Point Indian Community Organization, and (2) in a few Indian businesses, which under the compact must now become management contractors of not more than 20 machines the Tribes will own. The Tribes were not sure what other gaming we might want to permit in the future, so we agreed with the State to continue to negotiate at least once annually for the next three years to consider additional gaming operations.

As matters turned out, in 1992 alone, two unanticipated events

have occurred requiring two amendments to the compact. First, in July, the United States Attorney threatened to close the State's lottery on the Reservation unless it was included in the compact. Because the lottery proceeds support Reservation public schools, the Tribes promptly agreed with the State to amend the compact to include the lottery, although the Tribes did not necessarily agree with the United States' legal position or action.

Second, the Tribes were approached this summer by an Indian owned company that proposed to locate a casino, motel, restaurant and shopping complex on the Reservation, principally to attract Canadian and other tourists. The State agreed to a second amendment to our compact authorizing 24 hour operation of live keno and poker games, and to allow machines with a coin drop mechanism. However, we also wished to establish higher progressive jackpots, and have video slot machines, electronic pull-tab machines, blackjack and simulcast dog racing in our new casino. We learned in our negotiations on the second amendment to our compact that the State has said "no" on all these items to other tribes, and that consistency required saying "no" to us. The purpose of this bill is to change this policy.

You should enact this legislation because it is absolutely essential to promote Indian economic advancement in our State. I am sure you know that Montana's Indian reservations are the poorest parts of the State. Unemployment is often over 50 percent.

EXHIBIT 1
DATE 2-19-93
STC-13

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EXHIBIT 1
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STP-13

Poverty and the social dislocation it causes are everywhere.

This is as much against your interest as it is against ours. The effects of this widespread and longlasting poverty are **not** confined to Indian country. They affect every part of the State.

Intolerable through this poverty is, it may have seemed until recently that nothing could really be done about it. But that is no longer true. The pervasive cancer of Indian poverty can now be cured -- without massive expenditures of public funds or new taxes that burden other Montana citizens -- by permitting broad Indian gaming on the lands of tribes that wish to conduct it.

This has happened on other Indian reservations in other states in the past five years. The turnaround on Indian reservations in Connecticut, Wisconsin, Minnesota, New Mexico, Arizona, and California in the past few years has been startling, nothing short of a miracle. The **New York Times** reported on its first page on Sunday, January 31,that Indian gaming now brings over $6 billion a year into reservations. That is twice the size of **the entire federal Indian budget.** Those reservations have been transformed. There is even the promise of prosperity upon them.

Unemployment is very high on my Reservation,even though we have done everything we can to lower it -- including operating a tribal defense firm that is the largest single industrial employer

in Montana with over 200 jobs. Indian gaming of the kind we propose will bring hundreds of new jobs into our Reservation. Our members cannot fill every position, so Indian gaming will be an economic benefit to the entire State. These are not idle dreams or speculation. This is happening now on dozens of Indian reservations in the other states I have mentioned.

With your help, this can take place on my Reservation and others in Montana as well. We do not ask that you loosen the -- gaming laws elsewhere in the State. We ask only that you open up the compact negotiations by allowing tribes to play games that are not played elsewhere -- video slots, blackjack, higher progressives and other games we seek. You should do this for yourselves, not just for us, **because it is not in your interest that Indians remain poor.** Tribes have close interrelationships with the State of Montana. Neither you nor we can avoid that. What benefits us benefits you. If we are poor, the burdens on your government and society are greater. We need to work together to move forward together.

This interdependence and the possibility for joint gain is the primary reason the Fort Peck Tribes have taken the lead in the past ten years in working with State leaders to resolve other controversies -- by compacts concerning water rights and taxation as well as gaming. For decades, tribes and the State wrangled and litigated about jurisdiction, water rights and taxing authority.

EXHIBIT 1
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SSR-13

Many cases were filed and decided in courts, particularly in the 1960s and 1970s. Our attorneys have advised us that we could win a lawsuit compelling the State to compact with us to play the broader games we want. Other tribes have done that, for example, in the Lac du Flambeau case in federal court in Wisconsin.

But lawsuits don't end poverty. Wise policy can. Our Tribes have learned to resolve these kinds of disputes by negotiations. We were the first tribes, for example, to conclude a water compact with Montana. That compact, which was ratified by the Legislature and Tribal Executive Board in 1985, quantifies our reserved water rights. It also settled litigation between the Tribes and the State, protects certain existing non-Indian uses, provides for us to market water and establishes a neutral Board to settle any disputes concerning water used by Indians -- which is recognized as within tribal jurisdiction -- and that used by non-Indians under state law and jurisdiction.

The Fort Peck Tribes have also during this past year concluded agreements with the State to share motor fuel taxes and alcoholic beverages taxes, as well as an agreement concerning the enforcement of state cigarette sales taxes to non-Indians on the Fort Peck Reservation. We appreciate the efforts of the Legislature in authorizing all of these agreements -- except the one on alcoholic beverages, which we understand will be authorized in 1993.

The present legislation follows in these footsteps by working a common solution to the most important problem we share -- Indian poverty in Montana. Because most Indian tribes are in isolated areas distant from most resident populations, as Montana itself is somewhat remote from big population centers, we need special incentives -- like games **not** allowed elsewhere in Montana -- to attract customers. My Tribes' customers, for example, will mostly be tourists, many from Canada. It is surely fair to give tribal gaming these kinds of special incentives. For a critical difference between Indian gaming and gaming elsewhere in Montana is that **all** the money tribes receive from Indian gaming must be spent for public purposes and programs. This is a requirement of the federal Indian Gaming Regulatory Act. Tribes do not and can not operate gaming for private profit. Revenues tribes receive from gaming directly reduce the burdens on federal and state governments.

This legislation can be of lasting benefit to tribes and to all Montanans. That concludes my testimony. I will happily answer any questions you may have.

Exhibit 1
2-19-93
STR-13

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-19-93
BILL NO. SJR 13

1

TESTIMONY OF BLACKFEET TRIBE ON

SENATE JOINT RESOLUTION 13

Mr. Chairman, members of the Committee, thank you for this opportunity to testify in support of Senate Joint Resolution 13 regarding Gaming Compacts.

By way of back ground, the Blackfeet Tribe has been engaged in negotiations with the State of Montana since late 1988, shortly after the U.S. Congress enacted the Indian Gaming Regulatory Act. The initial discussions were essentially a feeling-out process, where the parties got to know each other and discussed general political philosophies. Later on in 1989 and on into 1990 the negotiations became more serious and substantive, with numerous proposed compacts being exchanged and counter-exchanged. The dialogue continued on into 1991 and 1992, with little or no headway being made on a gaming compact. This process has continued through several Tribal Council and state administrations, and the result has quite often been a deep sense of frustration and futility.

The Blackfeet Tribe perceives Class III gaming as a method by which the goals of the Indian Gaming Regulatory Act can be fulfilled. Those goals are to promote tribal economic development, tribal self-sufficiency, and strong tribal government. The lack of a compact has proven to be a detriment to the fulfillment of these goals. The Committee may recall recent news articles which list Glacier County, which is primarily composed of the Blackfeet Indian

Reservation, as among the five poorest counties in the entire United States. Class III gaming, when combined with tourism attractions, can certainly help alleviate this situation of dire poverty.

I am sad and disheartened to report to the Committee that not much progress has been made on a Gaming Compact between the Blackfeet Tribe and the State of Montana. The U. S. Congress has passed several extensions of time within which to negotiate gaming compacts, and the latest extension will expire on April 23, 1993. After that date, Indian tribes in the State of Montana which do not have negotiated gaming compacts with the State of Montana will not be allowed to engage in Class III gaming. This is the Federal law which will be applied, even as Class III, Casino-style gaming continues in the State, but outside the boundaries of those reservations where there is no gaming compacts. The point is that the State's negotiation team must somehow come to grips with the fact that the Indian Gaming Regulatory Act was enacted to strengthen tribal governmental institutions, and not to provide states with a stranglehold over Indian tribes. If greater flexibility in negotiations of gaming compacts does not become a fact of governmental relations, then the only recourse available to the parties may be litigation. We all know that litigation is long, costly, and creates negative relations. In terms of flexibility, I might enlighten the Committee to the recent ruling in Arizona where a mediator appointed by a Federal judge chose

EXHIBIT 2
DATE 2-19-93
SJR 13

the gaming compacts of three (3) Indian tribes over the agreements proposed by the State of Arizona. At least one of the compacts approved by the mediator will allow the Indian tribe to operate 2,600 electronic gaming machines plus poker and blackjack tables, craps and keno. The mediator noted in his opinion that he was swayed not only by the legal agreements, but also by economic conditions on the three reservations. His specific language on this issue is as follows:

> **"For whatever reasons, neither the state nor the federal government has furnished adequate revenue to provide for the needs of these tribes in areas of health, education, economic development or governmental infra-structure," Also, the tribes...lack tax bases and natural resources to generate returns sufficient to provide those necessities."**

Given the fact that the Blackfeet Indian Reservation and Glacier County have been listed among the poorest counties in the United States, coupled with the fact that Montana probably ranks behind only Nevada and New Jersey in terms of allowable casino-style gaming, it is highly probable that federal litigation would yield a result similar to the Arizona decision. This can be avoided if greater flexibility is given to the state negotiation team to negotiate and enter into meaningful compacts with the Indian tribes in Montana. The fact is that other states with little or not casino-style gaming have entered into gaming compacts with Indian tribes which have proven to be mutually beneficial from both an economic and social perspective.

In summary, the Blackfeet Tribe firmly supports Senate Joint Resolution 13 and urges passage of this legislation. Let us work together and fulfill the goals and objectives of the Indian Gaming Regulatory Act so that Indian tribes can be self-sufficient and also be good neighbors with the State of Montana.

Thank you.

Wayne Stiffarm
Blackfeet Gaming Comm.

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406)-395-4478 or 4210 - Finance Office
(406)-395-4282 or 4321 - Business Committee

Rocky Boy Route, Box 544
Box Elder, MT 59521

SENATE JUDICIARY COMMITTEE
EXHIBIT NO.
DATE
BILL NO.

A RESOLUTION

NO. 29-93

OPPOSING SENATE JOINT RESOLUTION NO. 13 OF THE MONTANA LEGISLATURE WHICH PURPORTS TO GRANT THE MONTANA GAMBLING CONTROL DIVISION GREATER FLEXIBILITY IN NEGOTIATING CLASS III TRIBAL STATE GAMING COMPACTS UNDER THE FEDERAL INDIAN GAMING ACT.

WHEREAS, the Chippewa Cree Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Reservation, by the authority of the Constitution and Bylaws of the Chippewa Cree Tribe approved the 23rd day of November, 1935 (amended April 1973), and

WHEREAS, pursuant to inherent tribal sovereignty and the Constitution and Bylaws of the Chippewa Cree Tribe, the Chippewa Cree Business Committee is charged with the duty to promote and protect the health, security and general welfare of the Chippewa Cree Tribe, and,

WHEREAS, Senate Joint Resolution No. 13 has been introduced in the Montana Legislature by Senators Dennis Nathe and Representative Dave Schwinden on behalf of the Fort Peck Tribes, and

WHEREAS, the Chippewa Cree Tribe views the instigation of Senate Joint Resolution No. 13 as another attempt on the part of the State to substantiate its negotiation position that public policy in Montana does not support negotiating with the tribes for substantial and economically viable gaming operations on Montana Reservations. Other states that have virtually the same permissive/regulatory gambling law scheme as the State of Montana have reached compacts with tribes that have proved to be economically beneficial to both the state and tribes, and

WHEREAS, public policy regarding gaming in Montana permits multi-million dollar gaming prizes and that the State sponsored gaming regularly issues prizes for tens of thousands of dollars, and

WHEREAS, Senate Joint Resolution No. 13 purports to grant the Gambling Control Division of the Montana Department of Justice greater flexibility in interpreting the Federal Indian Gaming Regulatory Act, State gambling policy and State gambling laws in forging gaming compacts with Montana Indian Tribes that will benefit all people in the State of Montana, and

WHEREAS, it is the position of the Chippewa Cree Tribe that Senate Joint Resolution No. 13 is unnecessary for the reason that the Governor and the Justice Department already have extreme flexibility under Montana's permissive/regulatory scheme of gambling laws, under the provisions of the Federal Indian Gaming Act 25 U.S.C. 2701 et. seq. and under the Federal Court case law that has developed since passage of the Federal Indian Gaming Regulatory Act, and

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-19-93
BILL NO. SJR13

WHEREAS, the Department of Justice and the Governor will use the rejection of this resolution by the houses of the Legislature to bolster its failure to negotiate with the Tribes despite the adequate flexibility provided by Montana Gaming Law, the Federal Indian Gaming Regulatory Act and the case law decided pursuant to the Federal Indian Gaming Regulatory Act.

THEREFORE BE IT RESOLVED, that the Chippewa Cree Business Committee hereby opposes Senate Joint Resolution No. 13 and urges the Montana Senate Judiciary Committee to instruct the Justice Department that Montana's permissive/regulatory scheme of gambling laws, the Federal Indian Gaming Act and the Federal Court cases arising pursuant to the act already provide adequate flexibility and guidance for the Gambling Control Division to reach Tribal-State Gaming Compacts with Montana Tribal Governments.

C E R T I F I C A T I O N

I, THE UNDERSIGNED, AS SECRETARY OF THE BUSINESS COMMITTEE OF THE CHIPPEWA CREE TRIBE, HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS OF WHOM SIX (6) MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING, DULY CALLED, NOTICED AND CONVENED THIS 17TH DAY OF FEBRUARY, 1993, AND THAT THE FOREGOING RESOLUTION WAS DULY ADOPTED AT SUCH MEETING, BY THE AFFIRMATIVE VOTE OF FIVE (5) MEMBERS FOR AND ZERO (0) MEMBERS AGAINST, AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN any WAY.

CHAIRMAN, BUSINESS COMMITTEE

SECRETARY, BUSINESS COMMITTEE

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-19-93
BILL NO. SB368

S.B. 368, HEARING FRIDAY, FEB. 19th, 10:00 A.M.

Unfortunately, we return to Helena again to oppose this legislation. We attempted on several occasions to ask the Confederated Salish and Kootenai Tribes to meet and discuss with us a progressive evolution to what this bill is asking for. Then Attorney General Racicot even orchestrated a meeting in Helena to help us break the ice and begin a cooperative effort on these issues. We did not receive any return correspondence nor did Mr. Racicot in the interim. The County felt and still feels our proposed items for discussion could have been worked through if they would have just came to the table. They refused!!

The Board of Commissioners held a hearing last Wednesday asking for testimony from the public on retrocession. Tribal members and non-members alike offered testimony. One overwhelming concern is the public's lack of understanding on how things will work. The details can't even be answered by the attorney's involved. How can retrocession be good unless people understand what it will be and how it will work. We in Lake County live in a very integrated society which by itself makes the issue very difficult because it is rare that families do not have racial interties.

The complexity of this issue needs to have an evolution through time and trial of a cooperative agreement that can be accomplished under existing law. We feel that if the Tribes would sit down once a month with us or more, we could hash out an agreement in detail to put into effect. With that accomplished, we believe it possible to come hand and hand to this body in

support of a partial retrocession bill.

In summary, we believe we did our part in trying to get with the Tribe and they simply refused to come to the table. We believe we must come to an agreement under existing law first and get something working before codification is attempted.

We do believe also that this past two years has afforded us a cooling off and a progression towards more trust and understanding that will allow us to come together and strike up an agreement that will evolve into good things.

We ask that you oppose this bill and allow us to begin the negotiations locally. By telling us to go home and sit at the table.

RESPECTFULLY,

Mike Hutchin

Mike Hutchin. Chairman

Gerald L. Newgard

Gerald L. Newgard, Member

Dave Stipe

Dave Stipe, Member

MONTANA MAGISTRATES ASSOCIATION

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-19-93
BILL NO. SB368

February 19, 1993

Bill Yellowtail, Senator
Chairman Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Senator Yellowtail:

I am sorry I cannot attend the hearing this morning as I am involved in a Commission on Courts of Limited Jurisdiction meeting. I am writing this letter in response to a letter circulated by A.C.E. (All Citizens Equal) concerning P.L. 280.

A.C.E. has never contacted me nor our lobbyist concerning P.L. 280. To my knowledge they have not contacted my board of directors on this issue. When they state as a fact that the western Vice President of the Montana Magistrates Association states "Retrocession is an effort to segregate and not integrate. It is an effort to split us apart, not bring us together." They are wrong. They took a piece out of a letter to further their position. It was taken out of context and our western Vice President Craig Hoppe will address the committee on this issue.

I am appalled that A.C.E. can blatantly print misleading information to further their agenda. I feel they should be publicly reprimanded. Our Association stands behind western Vice President Craig Hoppe's letter in its entirety.

Thank You.

Sincerely,

Gregory P. Mohr, President
Montana Magistrates Association

GPM/dnl

ENATE JUDICIARY COMMITTEE
XHIBIT NO. 6
DATE 2-19-93
ILL NO. SB360

MONTANA MAGISTRATES ASSOCIATION

February 17, 1993

To the Members of the Senate Judiciary Committee:

Today, I was given a copy of a letter dated February 15, 1993 from All Citizens Equal (A.C.E.). It appears from the content of the letter that the Montana Magistrates Association is endorsing the position which A.C.E. espouses in this mailing to the Legislators of Montana.

I am stating now, the Montana Magistrates Association does not endorse A.C.E. or what they propose. On the fact sheet which accompanies the cover letter, there is a quote attributed to the Western Vice President of the Montana Magistrates Association. I confess, that I am and was that vice president. I am the City Judge in St. Ignatius and was at that time, a second Justice of the Peace in Lake County, covering the south end of the county. The quote was taken from a letter written to then Chairman of the Senate Judiciary Committee, Senator Dick Pinsoneault. It was written at his request as a position statement to the retrocession issue in 1991. The two sentences taken from the letter truly do not reflect the context of the letter. I have had the Lake County Commissioners fax me a copy of that letter so that you can read it in its entirety. I believe only then can you understand my position on the retrocession issue. It is attached for your perusal.

I must admit that my position has not changed since March 6, 1991. I still believe that it is only by working together and pooling the resources of the two governmental entities in Lake County that the residents of the county and of the reservation will benefit by the combined services. As it is today, there is too much duplication of services and a jockeying for turf, when there is more than enough to go around for all of us. By sharing our law enforcement personnel, coordinating our court dispositions, and to coin a phase by Senator Doherty, then we can get a handle on our "bad actors". By doing this, we will make Lake County and the Flathead Reservation a safer and a better place to live. We will be able to create meaningful sentences that change people rather than letting them rot in our jails or revolve through our courts. But it only by using all of our resources: law enforcement, judicial, human services, mental health, and drug and alcohol programs can we get a handle on our "bad actors" and give them a new script to live by. It is by doing this cooperatively, together, and for the good of all that we will make an impact that will last for generations to come, one that our children's children will prosper in.

Along these lines, I am reminded of a coyote story about the people of the Driftwood Lodge. Every year after Mother Earth warmed and sent her rains to melt the snow and nourish the lands to bring

forth its bounty, the people of the Driftwood Lodge would meet. They were a collection of many different people, but when they were brought together at this time of year, they were very strong. Their strength was such that they could change the course of the mightiest rivers, but it was only by their combined numbers that they could do this. I view the people of the Flathead Reservation and Lake County as members of such a Lodge and it is only by staying together that great things can come about. By picking us apart and setting one against the other, the strength of the Lodge is broke and we will all go down the river together.

Thank you for your time and consideration in this manner.

Sincerely,

Craig L. Hoppe

Craig L. Hoppe
St. Ignatius City Judge
Lobbyist MT Magistrates Assn

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-19-93
BILL NO. SB400

SB 400 TESTIMONY--- DNRC

SENATE BILL 400 CREATES IMMUNITY FROM SUIT FOR CONSERVATION DISTRICT SUPERVISORS. A CONSERVATION DISTRICT IS A POLITICAL SUBDIVISION OF THE STATE. SUPERVISORS ARE ELECTED OFFICIALS WHO DIRECT THE ACTIVITIES OF THEIR DISTRICT ON A VOLUNTEER BASIS. DISTRICTS PROVIDE LOCAL NATURAL RESOURCE MANAGEMENT IN A WIDE VARIETY OF AREAS INCLUDING: EROSION CONTROL, STREAMBANK PROTECTION, RANGELAND MANAGEMENT, CONSERVATION EDUCATION, WATER RESERVATIONS, IRRIGATION WATER MANAGEMENT, ETC.

THE PURPOSE OF THIS BILL, IS SIMPLY TO PUT INTO STATUTE WHAT THE SUPREME COURT HAS DECLARED WITH RESPECT TO VOLUNTARY PUBLIC OFFICIALS SERVING THE PUBLIC INTEREST AT THE GRASS-ROOTS LEVEL. THE GENERAL RULE OF LAW IS THAT IF A PUBLIC OFFICIAL, SUCH AS A DISTRICT SUPERVISOR WORKING IN PERFORMANCE OF AN OFFICIAL DUTY WHICH IS QUASI-JUDICIAL OR DISCRETIONARY IN NATURE, MAKES A MISTAKE OR ERROR IN JUDGEMENT, THE OFFICIAL WILL NOT BE HELD LIABLE FOR DAMAGES, PROVIDED THERE IS NO WILFUL OR WANTON MISCONDUCT ON THE PART OF THE OFFICIAL. AS STATED BY THE MONTANA SUPREME COURT, THE PURPOSE OF THIS RULE IS THAT THE PUBLIC INTEREST REQUIRES FULL INDEPENDENCE OF ACTION AND DECISION, UNINFLUENCED BY ANY FEAR OF APPREHENSION OF CONSEQUENCES.

IF CONSERVATION DISTRICTS ARE TO CONTINUE TO ATTRACT THE BEST PEOPLE TO SERVE AS CONSERVATION DISTRICT SUPERVISORS, THEN IS NECESSARY THAT THE LEGISLATURE UNEQUIVOCALLY STATE THAT THE PUBLIC INTEREST SERVED BY THESE LOCAL PUBLIC SERVANTS REQUIRES THAT THEY BE ABLE TO WORK IN AN ENVIRONMENT FREE OF FEAR THAT THEIR LIVELIHOODS WILL BE ADVERSELY AFFECTED WHEN THEY ACT IN WAYS THAT DO NOT AMOUNT TO WILFUL OR WANTON MISCONDUCT. SB 400 ACHIEVES THIS RESULT.

WOMEN'S LAW SECTION

STATE BAR OF MONTANA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-19-93
BILL NO. SB406

To: Chairman Sen. Yellowtail and Senators of Senate Judiciary Committee

From: K. Amy Pfeifer, Chair, Women's Law Section, State Bar of Montana

Re: SB 406 - Expand Domestic Abuse Laws to Other Persons

Date: February 19, 1993

The Women's Law Section of the State Bar of Montana urges your support of SB 406. I speak on behalf of the Section and not the State Bar of Montana.

Our Section has a continuing interest in the protection of this state's victims of violence, particularly in the area of domestic and sexual abuse. We support Sen. Towe's stalking bill (SB 37) and believe the amendments to the domestic violence protection statutes that you have before you today will work well together with Sen. Towe's bill to strengthen the relief available to victims of violence, particularly the women and children of this state. We have worked with the Montana Coalition Against Domestic Violence to bring these amendments to your attention.

The amendments are fairly simple. First, we wish to broaden the class of individuals that may petition for a domestic violence restraining order under 40-4-121. As some of you may know, this statute, and the procedural statutes which follow it, allow victims of domestic violence to obtain forms from district, city, municipal and justice courts to petition those courts, generally pro se, for protection from their abuser. Much of the current law stems from extensive amendments to this section in 1985. The current language allows spouses, former spouses and persons who are or have cohabited within the last year to apply for relief under this section. As I am sure you are all aware, a couple does not have to have lived together to have a child in common or to be parties to an abusive relationship. That is the reason for the definition of partner: the cohabitation requirement is gone.

Family member is defined to include parents and children, including relationships created by adoption or step families. Children learn behaviors from their parents, and children go on to become abusers and victims. Teenage sons model their father's behaviors and abuse

their mothers, fathers may abuse their daughters. Without an ability to receive a restraining order under this statute, which allows them to obtain forms and relief from any court, these victims would be required to obtain relief through a civil action in district court under Title 27, the civil injunctions statutes. And even if that were not an impediment to obtaining relief, we feel that is important to recognize this behavior for what it is, domestic violence, and to treat it as domestic violence for purposes of the relief available, including counseling for abusers, and for reporting.

The broader classes of those protected are repeated in Section 2 of the bill, which is the crime of domestic abuse. Again, categorizing the offense of assault among these classes of people calls the crime what it is, domestic violence, and provides for application of the counseling requirement of this statute. Again, the crime will be reported as domestic abuse.

The second group of amendments speak to the need to focus on the behavior of the offender. Since 1989, when convicted of domestic abuse, the offender must complete at least a six month counseling course, totaling at least 25 hours. Obviously, the offender must receive a sentence that holds him subject to the jurisdiction of the court for six months in order for this to work. A problem has arisen though in that due to the demands for counseling or the offender's failing to attend all classes, the six months sentence may expire before even this minimum counseling is completed. To allow time for at least the minimum course of counseling to be completed we have suggested lengthening the maximum sentence to one year for the first or second offense. In this way an offender could be subject to the court's jurisdiction for the length of time necessary to complete the minimum counseling.

In addition to the ability to provide for a longer sentence, it is also important that a court receive recommendations from the counselor as to any necessary follow-up. The language in subsection (4) (c) on page 5, requires the counselor to make the recommendations which the court may then consider and may choose, based on those recommendations, to order additional counseling. Again, it would be important for the offender to have received a long enough sentence, whether it be deferred or suspended, to be subject to the court's jurisdiction during any period of additional counseling. These provisions are intended to further address the root of the problem, the offender's behavior, which, if not altered, will result a continuation of the cycle of violence in that family or relationship, rising demand for services of domestic violence shelters for his victims, and increased demand on AFDC and medicaid.

Counseling is also added to the list of relief a victim may obtain in a restraining order.

We urge your support of SB 406.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-19-93
BILL NO. SB406

RE: Testimony - SB 406

FROM: Janet Cahill, Director, Violence Free Crisis Line, Kalispell, MT

Management Team, Montana Coalition Against Domestic Violence

In the twelve (12) years that I have been providing services to battered women and their children, I have seen the problem of domestic violence grow at an alarming rate. In my program the number of new cases increased 75% between 1989 and 1992. We used to ask why women would stay in an abusive relationship. Now we know that it is frequently more dangerous to leave than to stay. More women are killed when attempting to leave than if they stay. Nationally, over 4,000 women each year are killed. We don't know about these deaths in Montana because they are lumped in with all other homicides.

Some women do try to leave even at great risk. They usually go to shelters for assistance. According to statistics from 16 programs who provide victim services in Montana, shelter was provided to 533 women and 3,058 children for a total of 12,043 nights in 1992. 180 women were turned away because of being overcrowded or having lack of funds to provide services. 9,404 persons sought services as a result of domestic violence.

Since 1985 domestic abuse has been a crime. We have finally held offenders accountable for their actions. But in order to prevent the everincreasing costs to society and particularly to Montana in health care, job loss, victims services, and counseling, we must continue to see that treatment services are offered and are effective. We must continue to emphasize that offenders must change their behavior. Because treatment became mandated in 1989, many programs to provide

these services became available. Professionals trained to provide services specifically directed at changing this behavior are available in most areas. However, they have become overwhelmed with the number of referrals. This results in a waiting period for offenders to enter the program. Because the courts only have jurisdiction over offenders for six months, some have not completed the program. It is highly probable that these offenders will reoffend. With an extension of the jurisdiction to one (1) year, offenders will be able to complete treatment. In addition, in 60% of the cases there is also substance abuse. The treatment provider will then have the option of recommending substance abuse treatment as well.

100% of children in homes where domestic violence occurs are affected by witnessing the abuse. The most alarming effect is modelling the violent behavior. Children as young as 2 have been observed mimicking strangling on their infant siblings. This behavior is acted out in the family as well. Adolescents become at risk for violent crimes, teenage pregnancy and substance abuse. Adolescents also model violent behavior in their relationships. Dating violence is exploding as a serious component of domestic violence. We must include other family and relationship violence in this crime. We can prevent the geometric increase of this problem by holding young offenders accountable as well and offering them an opportunity to learn alternatives to violence before they become a greater cost to society as adults.

The Montana Coalition Against Domestic Violence encourages you to support passage of this important legislation.

EXHIBIT NO. 10
DATE 2-19-93
BILL NO. SB406

TESTIMONY IN SUPPORT OF SENATE BILL 406

Dear Members of the Senate Judiciary Committee:

I want to register my support of this bill. Extension of protection to family members via a Temporary Restraining Order would have helped me in my own personal situation where my ex harassingly called my parents and other family members and friends in an attempt to make contact with me. If my Restraining Order had included my family members, he could have been found in violation of the order, even though I am not convinced that anything would have been done about it. This man has threatened to kidnap our son, and threaten my livelihood. He is [illegible] everyone in the legal system has told me that unless he actually does something, threats are meaningless and do constitute grounds for charges. I have been dismissed by Parole and Probation, Region III director, Mike Gersack, hysterical and unprofessional. As I pointed out to Mr. Gersack until one is on the ground getting their head kicked in, you can't really know how frightening the situation is.

Charges are currently pending against him for domestic abuse for the incident that caused me to leave him, but so far, the case has not proceeded beyond the actual charging. In this vein, I also support an extension of the penalty from six months to one year although, again, I am not convinced that it will make any difference in practice because when these guys are found guilty and convicted, the six months sentence is imposed with all but a certain number of days suspended. If the sentence is extended, and some kind of counseling is ordered, the extension will allow time

for completion of any ordered program and jurisdiction remains with the court until that counseling is completed.

I am discouraged and disillusioned with a system that allows a family member to beat another and it is only a misdemeanor until the perpetrator commits the crime three times, but if a stranger beats another stranger, it can be a felony the first time. This does not make sense to me. My question to the system and you as law makers is, how many people have to die or be forever disabled as Leslie Miller has been. Please do whatever it takes to stop the violence.

Sincerely,

Melody K. Brown

Melody K. Brown

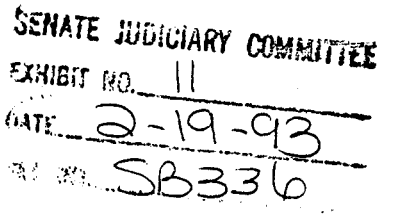
Amendments to Senate Bill No. 336
First Reading Copy

Requested by Senator Yellowtail
For the Committee on Judiciary

Prepared by Valencia Lane
February 18, 1993

1. Page 1, line 21.
   Page 1, line 24.
   Page 2, line 21.
   Page 2, line 24.
   Page 3, line 23.
   Page 4, line 1.
Strike: "percentage"
Insert: "average percent"

2. Page 1, line 22.
   Page 1, line 25.
   Page 2, line 22.
   Page 2, line 25.
   Page 3, line 24.
   Page 4, line 2.
Strike: "other"
Insert: "classified"



DATE 2-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SJR 13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
CRAIG L. HOBBS	MT. MIG. ASSN & SELF	SB 368		V
Dorothy Clinkenbeard	CSKT Tribe	SB 368	X	
Bunky Hall	CSKT	SB 368	X	
CALEB SHIELDS	FT. PECK TRIBES	SJR 13	X	
Gayla Goss	CSKT	SB 368	X	
Jim Morsette	Chippewa Cree Tribe	SJR 13		V
Bob Servais	N.D.G	368	X	
WAYNE GOSS	BLACKFEET TRIBE	SJR13	X	
Bennie Francis	SoDak Gaming	SJR13	X	
Don Allen	Ft. Peck Tribes	SJR13	X	
Judith Wang	Missoula City Attorney's Office	SB406	X	
Lynnea Wang	Self	SB406	X	
Gloria Hermanson	Save Glendale with the future	SJ13		X
Deanne Sandholm	A.G.	SJR 13		
Jamie Doggett	MT Cattlewomen	SB400	X	
Mike Volesky	MT Assoc. Conservation Dist	SB400	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2-19-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJ 13 - Raine

SB368 - Doherty SB400 - Raine SB406 - Bartlett

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Larry M-SREK	LAKE Co. ATTORNEY	SB 368		X
Joe Feldmeth	Lake Co. Sheriff	368		X
Gerald L. Rengard	Lake County Commissioner	SB 368		X
Laurie McCrea	CSKT Tribes	SB of B68 SJ13	X	
Rhonda Swaney	CSKT Tribes	SB 368	X	
Ruth Swaney	CSKT Tribes	SB 368	X	
Pat Smith	"	SB 368	X	
GEORGE OCHENSKI	CSK TRIBES	SB 368	X	
JAMES WEBER	CSK TRIBES	SJR 13	X	
CATHRINE R. FLESHER	Clerk of Court	SB406		X
Rose Morigeau	CSKTribes	SB 368	X	
Mike A. Finley	CSK TRIBES	SB 368	X	
Jacque A. Morigeau	CSK TRIBES	SB 368	X	
Doris M. Coleman	"	"	✓	
Joseph F. McDonald	CSK Tribes	SB 368	✓	
Major Bird	CSK Tribes	SB 368	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/19

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJR13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dave Schulthess	Rep. Dist 20	SJ13	✓	
CC Ibsen	Missoula Police	SB406	✓	
Tootie Welker	MAPP	SB368	✓	
AL Oaks	BLFT Tribe			
Mark E. Nelson / Ronan	Self	SJ13		✓
Steve Schmitz	DNRC	SB 400	✓	
Amy Pfeifer	Women's Law Section	SB 406	✓	
Mark E. Nelson / Ronan	Self	SB368		✓
Beth Baker	Dept of Justice	SB368	✓	
Craig L. Hoppe	Mt. Magistrates Assn	SB406	X	
Denise Sands	MT. Women's Lobby	SB406	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SJR 13, SB 368, 400, 406

Name	Representing	Bill No.	Check One: Support	Oppose
Rep. Angela Russell	Representative House	368	✓	
Kathleen Fleury	Indian Affairs	368	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993, at 5:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	NONE
Executive Action:	SB 336
	SB 349
	SB 323
	SB 397
	SB 368
	SB 406
	SJR 13

EXECUTIVE ACTION ON SB 271

Discussion:
Senator Halligan told the Committee that SB 271 should be

referred to the Finance and Claims Committee because of the fiscal note. Senator Halligan said a citizen review board was an excellent idea, but there was an existing Foster Care Review Committee in statute that was reviewed every six months.

Motion:
Senator Harp moved SB 271 be REFERRED to the Finance and Claims Committee.

Discussion:
Chair Yellowtail said SB 271 would have a substantial fiscal impact.

Senator Grosfield said SB 271 was an appropriations bill, therefore it did not belong to Finance and Claims. SB 271 spends money, it does not bring in money. There was no revenue from SB 271. Senator Grosfield said SB 271 is a regular bill that spends money.

Motion:
Senator Harp moved to TABLE SB 271.

Discussion:
Senator Grosfield said he would speak against the tabling of SB 271. Senator Grosfield said there were a lot of people who felt there were problems with the foster care system. Senator Grosfield said the citizens review boards already in place are it not working, therefore something needs to be done.

Senator Crippen told the Committee SB 271 could be sent to Finance and Claims is because nothing is being appropriated.

Senator Halligan told the Committee if SB 271 has trouble passing out of the Finance and Claims Committee, he would work with Ms. Lane to expand the membership of the existing Foster Care Review Committee. Senator Halligan said the Foster Care Review Committee does not have an additional cost because they are all volunteers.

Senator Harp withdrew his motion to TABLE.

Chair Yellowtail moved on order of business #6 to refer SB 271 to the Finance and Claims Committee.

EXECUTIVE ACTION ON SB 323

Discussion:
Chair Yellowtail explained the amendments. (Exhibit #1)

Senator Harp asked Chair Yellowtail about striking the word "youthful." Chair Yellowtail said "youthful" was struck because the age limit was increased to 35, therefore "youthful" was not necessary.

Motion:
Senator Halligan moved to AMEND SB 323.

Discussion:
Senator Harp spoke against the motion to amend. Senator Harp told the Committee he has visited the Swan River Camp several times. The facility is for young offenders. SB 323 changes the whole concept of the Swan River Youth Camp and increases the age limit. Senator Harp increasing the age limit would probably involve more hardened criminals. Senator Harp questioned the security of the facility because it is very open to the woods and accessible to Highway 83.

Senator Towe asked Mr. Gamble to address the amendment. Mickey Gamble, Department of Corrections and Human Services, told the Committee the word "youthful", was stricken so the camp could increase the age for offenders. However, the camp would mainly focus on younger offenders. The age was increased so the camp could be available for those offenders who violate their parole or probation and would fit the program. Mr. Gamble said an escape from the facility would be very limited because of what the offenders would lose and the intensity of the supervision, which is constant, 24 hours a day.

Senator Halligan asked Mr. Gamble about the inmates. Mr. Gamble said all the inmates would be adults. Anyone in the program would be adjudicated as adults.

Senator Brown asked Mr. Gamble about the location of the boot camp. Mr. Gamble told the Committee the boot camp would be located at the Swan River Youth Camp.

Senator Brown asked Mr. Gamble about the current use of the camp. Mr. Gamble said the Swan River Youth Camp would no longer be used as it is today.

Senator Towe asked Mr. Gamble about the funding. Mr. Gamble said funding for vocational education was being limited because of the short incarceration period, which is usually a 90 day period.

Senator Harp told the Committee SB 323 would be a MAJOR change.

Vote:
The motion to amend SB 323 CARRIED UNANIMOUSLY.

Motion:
Senator Towe moved SB 323 DO PASS AS AMENDED.

Discussion:
Senator Bartlett asked Mr. Gamble about the shock incarceration program. Mr. Gamble said shock incarceration is primarily focused to divert people from the system. The program would consist of offenders recommended for placement by a judge, offenders who violate parole, and offenders already incarcerated if they would fit into the program. Mr. Gamble stated that records indicate that shock incarceration was an excellent program. The program would decrease the population of the Montana State Prison.

Senator Bartlett asked Mr. Gamble about the screening process in which offenders would be allowed into the program. Mr. Gamble said in the screening process would done by a classification process. The classification process would involve a risk and need assessment as people enter the system.

Senator Bartlett asked Mr. Gamble if the people performing the screening would be specifically trained in techniques for the screening function. Mr. Gamble said yes.

Senator Bartlett said the fiscal note for SB 323 indicates an average daily population of 40 offenders. Senator Bartlett asked Mr. Gamble about the average daily population of the Swan River Youth Camp in its current function. Mr. Gamble said the Swan River Youth Camp averages between 50 and 55 offenders.

Senator Harp asked Mr. Gamble about the population in the Montana State Prison. Mr. Gamble said there were 1,162 inmates.

Senator Harp asked Mr. Gamble if the intention was to decrease the population of the state prison to 850 inmates. Mr. Gamble said yes.

Senator Blaylock asked Mr. Gamble if the community around the facility knows about SB 323. Mr. Gamble told the Committee that public hearings will be held.

Senator Bartlett asked Mr. Gamble how the offenders would be supervised with eight fewer employees. Mr. Gamble said the whole idea of a boot camp was to work together. Less employees are needed because the offenders are constantly together working as a group. The group is always under direct supervision.

Vote:
The Do Pass As Amended motion CARRIED with Senators Rye, Harp, Brown, and Halligan voting NO.

EXECUTIVE ACTION ON SB 397

Motion:
Senator Doherty moved SB 397 DO PASS.

Discussion:
Senator Blaylock asked Senator Doherty if the attack on the judge in Great Falls would have happened, even with a law to make an attack on a judge a felony. Senator Doherty said the judge probably would have still been attacked. However, the prosecutor could have brought a felony count against the individual. Senator Doherty said if there was a law making it a felony to attack a judge, it would help.

Motion/Vote:
The Do Pass motion CARRIED with Senators Crippen, Blaylock, Brown, Harp, voting NO.

EXECUTIVE ACTION ON SB 336

Discussion:
Chair Yellowtail explained amendment SB033601.ACE.

Motion/Vote:
Chair Yellowtail moved to AMEND SB 336. (Exhibit #2) The motion CARRIED UNANIMOUSLY.

Discussion:
Chair Yellowtail said according to the Constitution, judges salaries cannot be lowered.

Senator Crippen asked Chair Yellowtail if the Governor's and other elected official salaries, would be increased with the passage of SB 336. Chair Yellowtail asked Ms. Lane to check on the question.

Senator Halligan said the goal of SB 336 was not to treat judges the same as state employees. Judges should not receive raises along with state employees.

Chair Yellowtail told the Committee they would come back to SB 336.

EXECUTIVE ACTION ON SB 349

Motion:
Senator Halligan moved SB 349 DO PASS.

Discussion:
Senator Bartlett told the Committee there were proposed amendments.

Senator Halligan withdrew his DO PASS motion.

Motion:
Senator Halligan moved to AMEND SB 349. (Exhibit #3)

Discussion:
Chair Yellowtail explained amendment sb034901.avl.

Vote:
The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Harp moved SB 349 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SJR 13

Motion:
Senator Brown moved to TABLE SJR 13.

Discussion:
Senator Towe asked why the Committee wanted to TABLE SJR 13.

Chair Yellowtail said the Attorney General explained that SJR 13 had no reason for passing. SJR 13 would not change state policy as towards Indian gaming compacts, therefore the Attorney General would disregard the resolution.

Senator Towe said resolutions are not usually binding, because they are not statutes. Senator Towe said the Indian tribes were frustrated because the position of the State, through the Attorney General, was contrary to the federal statute in case law on gambling. Senator Towe said SJR 13 should be passed indicating the sense of the legislature. Senator Towe urged support for the amendment sjr001301.avl.

Motion:
Senator Towe made a substitute motion to AMEND SJR 13. (Exhibit #4)

Discussion:

Senator Towe explained amendment sjr001301.avl.

Motion:
The motion to amend FAILED by a Roll Call Vote.

Motion:
The motion to TABLE CARRIED with Senator Rye voting NO.

Discussion:
Chair Yellowtail suggested the legislature amend statutes, giving clear directions of the legislature's intent, that indian tribes be dealt with separately from other state policies as to Indian gaming on the reservations.

EXECUTIVE ACTION ON SB 368

Motion:
Senator Doherty moved SB 368 DO PASS.

Discussion:
Chair Yellowtail asked Senator Doherty if non-Indian misdemeanor offenders would be dealt with by the tribal court under SB 368. Senator Doherty said no.

Senator Rye asked Senator Towe about enrolled members of an Indian tribe. Senator Towe said an enrolled member of a tribe would be a person whose name was on the roll. They are placed on the roll at birth, or shortly there after, by a full action of the tribal council to accept them as a tribal member. It would only be those members in which the jurisdiction of the tribal court exists.

Senator Doherty said the question of jurisdiction would be sorted out after the person was arrested on a misdemeanor count.

Senator Grosfield asked Senator Towe about jurisdiction. Senator Towe said there would be jurisdiction over member of other tribes only for misdemeanors.

Senator Grosfield told the Committee that he would support the DO PASS motion.

Senator Brown asked Senator Towe about civil case jurisdiction. Senator Towe said if a person does business on a reservation, they submit themselves to the jurisdiction of the tribal court. If a person sued someone they would have to sue the tribal court if the action took place on the reservation.

Vote:
The Do Pass motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 400

Discussion:
Chair Yellowtail said SB 400 called for an immunity from suit for conservation district supervisors. There was a suggestion to amend them into existing law.

Ms. Lane said the question involved whether the Tort Claims Act could be amended to include conservation districts. Ms. Lane said conservation districts were covered by the Tort Claim Act, but individual officers were not. The conservation district has to indemnify individual officers, but they can not afford to buy the insurance to identify the individuals. The inclusion of conservation district into the Tort Claims Act was not satisfactory, therefore SB 400 was drafted. Conservation districts are covered by the act, but not covered by the State. The state does not indemnify conservation district employees or pay claims against the conservation districts. Conservation districts are subdivisions of the State, just like school districts and counties. Conservation district supervisors want immunity from suit so they could not be sued or pay claims.

Senator Towe said conservation districts are included in the Tort Claims Act, therefore supervisors are identified as public officials by the conservation district and taken care of in the law. Senator Towe said the problem is that the conservation district supervisors want the Tort Claims Division to defend them. The Tort Claims Division defends the State, not local government, cities, or counties. The Tort Claims Division can not pay for the conservation districts defense. Senator Towe said SB 400 was unworkable.

Motion:
Senator Towe moved SB 400 DO NOT PASS.

Discussion:
Senator Grosfield said there was a problem with employing conservation district supervisors. Senator Grosfield said conservation district supervisors were volunteers who take on state regulatory functions. Senator Grosfield said supervisors were worried about liability, therefore difficult to hire.

Senator Towe said in section 2-9-11 there is immunity for any legislative act. Therefore, if the conservation district makes a decision that was a legislative act, they would be completely immune. Senator Towe said they would not be immune if it was an administrative act.

Senator Grosfield told the Committee an administrative act was the biggest area of liability.

Senator Towe WITHDREW his Do Not Pass motion for SB 400.

Motion:
Senator Towe moved to TABLE SB 400.

Vote:
The motion to TABLE TIED by a Roll Call Vote.

Discussion:
Chair Yellowtail asked Senator Grosfield to work on amendments for SB 400 so action can be taken at a later date.

EXECUTIVE ACTION ON SB 406

Motion:
Senator Bartlett moved SB 406 DO PASS.

Discussion:
Senator Towe asked Senator Bartlett about a permanent injunction. Senator Bartlett replied that judges probably would not issue permanent injunctions against a parent, unless there was extensive abuse and the judge feared for the wife or children's lives.

Senator Crippen told the Committee that SB 406 was a good bill.

Vote:
The Do Pass motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 336

Discussion:
Senator Crippen said the Governor and the elected officials do not receive raises automatically.

Motion:
Chair Yellowtail moved SB 336 DO PASS AS AMENDED.

Discussion:
Ms. Lane reminded the Committee they adopted two sets of

amendments. One set was adopted earlier in the hearing, the other set was adopted at the first hearing on this date.

Vote:
The Do Pass As Amended motion CARRIED with Senators Harp and Rye voting NO.

ADJOURNMENT

Adjournment: 7:58 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 323 (first reading copy -- white), respectfully report that Senate Bill No. 323 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

421057SC.Sma

SENATE STANDING COMMITTEE REPORT

February 22, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 336 (first reading copy -- white), respectfully report that Senate Bill No. 336 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 6 and 7.
Strike: "INDEXING" on line 6 through ";" on line 7

2. Page 1, line 13.
Strike: "(a)"

3. Page 1, line 19.
Strike: "(i)"
Insert: "(a)"

4. Page 1, line 21.
Strike: "(ii)"
Insert: "(b)"

5. Page 1, line 21.
Page 1, line 24.
Page 2, line 21.
Page 2, line 24.
Page 3, line 23.
Page 4, line 1.
Strike: "percentage"
Insert: "average percent"

6. Page 1, line 22.
Page 1, line 25.
Page 2, line 22.
Page 2, line 25.
Page 3, line 24.
Page 4, line 2.
Strike: "other"
Insert: "classified"

7. Page 1, line 24.
Strike: "(iii)"
Insert: "(c)"

Amd. Coord.
Sec. of Senate

8. Page 2, line 2 through line 13.
Strike: subsection (b) in its entirety

9. Page 2, line 14.
Strike: "(a)"

10. Page 2, line 19.
Strike: "(i)"
Insert: "(a)"

11. Page 2, line 21.
Strike: "(ii)"
Insert: "(b)"

12. Page 2, line 24.
Strike: "(iii)"
Insert: "(c)"

13. Page 3, line 2 through line 13.
Strike: subsection (b) in its entirety

14. Page 3, line 16.
Strike: "(a)"

15. Page 3, line 21.
Strike: "(i)"
Insert: "(a)"

16. Page 3, line 23.
Strike: "(ii)"
Insert: "(b)"

17. Page 4, line 1.
Strike: "(iii)"
Insert: "(c)"

18. Page 4, line 4 through line 15.
Strike: subsection (b) in its entirety

-END-

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

WM — Amd. Coord.
WM Sec. of Senate

421059SC.Sma

SENATE STANDING COMMITTEE REPORT

February 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 349 (first reading copy -- white), respectfully report that Senate Bill No. 349 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 4 through 6.
Following: "AN ACT" on line 4
Strike: remainder of line 4 through "AND" on line 6

2. Title, line 8.
Following: "DETAINER"
Insert: "; AND AMENDING SECTION 70-27-115, MCA"

3. Page 1, line 11 through page 2, line 1.
Strike: sections 1 through 3 in their entirety
Insert: "**Section 1.** Section 70-27-115, MCA, is amended to read:

"**70-27-115. Defendant's appearance and answer.** On or before the day fixed for ~~his~~ the defendant's appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. In any case, the defendant shall answer the complaint and summons within 10 days."

-END-

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

WL — Amd. Coord.
MM Sec. of Senate

421059SC.Sma

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 397 (first reading copy -- white), respectfully report that Senate Bill No. 397 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

WM - Amd. Coord.
Sec. of Senate

421058SC.Sma

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 406 (first reading copy -- white), respectfully report that Senate Bill No. 406 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

421059SC.Sma

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. SJ 13

DATE 2/19/93 TIME 6:55 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen		X
Senator Rye	X	
Senator Grosfield		X
Senator Halligan		X
Senator Harp	X	
Senator Towe	X	
Senator Bartlett		X
Senator Blaylock		X
Senator Franklin		X

Rebecca Court
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to amend. SB 13. Failed

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. SB400

DATE 2-19-93 TIME 7:36 A.M. P.M.

NAME	YES	NO
Senator Yellowtail		X
Senator Doherty	X	
Senator Brown	X	
Senator Crippen	X	
Senator Rye		X
Senator Grosfield		X
Senator Halligan		X
Senator Harp		X
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock	X	
Senator Franklin		X

Rebecca Love
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to ~~DP~~ table. tied

Amendments to Senate Bill No. 323
First Reading Copy

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-19-93
BILL NO. SB323

Requested by Senator Christiaens
For the Committee on Judiciary

Prepared by Connie Erickson
February 18, 1993

1. Title, line 5.
Strike: "YOUTHFUL"

2. Page 1, line 18.
Page 2, line 14
Strike: "youthful"

3. Page 2, line 5.
Strike: "youthful"

4. Page 2, line 18.
Strike: "5 years"
Insert: "1 year"

5. Page 2, line 21.
Strike: "25"
Insert: "35"

6. Page 2, lines 22 and 23
Strike: "(c)" on line 22 through ";" on line 23.
Renumber: subsequent subsection

Amendments to Senate Bill No. 336
First Reading Copy

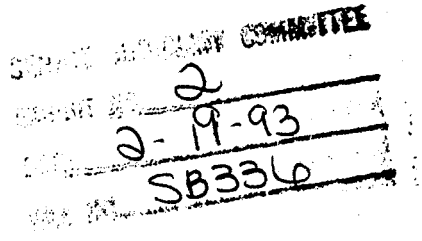
Requested by Senator Yellowtail
For the Committee on Judiciary

Prepared by Connie Erickson
February 19, 1993

1. Title, lines 6 and 7.
Strike: "INDEXING" on line 6 through ";" on line 7

2. Page 1, line 13.
Strike: "(a)"

3. Page 1, line 19.
Strike: "(i)"
Insert: "(a)"



4. Page 1, line 21.
Strike: "(ii)"
Insert: "(b)"

5. Page 1, line 24.
Strike: "(iii)"
Insert: "(c)"

6. Page 2, line 2 through line 13.
Strike: subsection (b) in its entirety

7. Page 2, line 14.
Strike: "(a)"

8. Page 2, line 19.
Strike: "(i)"
Insert: "(a)"

9. Page 2, line 21.
Strike: "(ii)"
Insert: "(b)"

10. Page 2, line 24.
Strike: "(iii)"
Insert: "(c)"

11. Page 3, line 2 through line 13.
Strike: subsection (b) in its entirety

12. Page 3, line 16.
Strike: "(a)"

13. Page 3, line 21.
Strike: "(i)"
Insert: "(a)"

14. Page 3, line 23.
Strike: "(ii)"
Insert: "(b)"

15. Page 4, line 1.
Strike: "(iii)"
Insert: "(c)"

16. Page 4, line 4 through line 15.
Strike: subsection (b) in its entirety

Amendments to Senate Bill No. 349
First Reading Copy

Requested by Senator Christiaens
For the Committee on Judiciary

Prepared by Valencia Lane
February 18, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-19-93
BILL NO. SB349

1. Title, lines 4 through 6.
Following: "AN ACT" on line 4
Strike: remainder of line 4 through "AND" on line 6

2. Title, line 8.
Following: "DETAINER"
Insert: "; AND AMENDING SECTION 70-27-115, MCA"

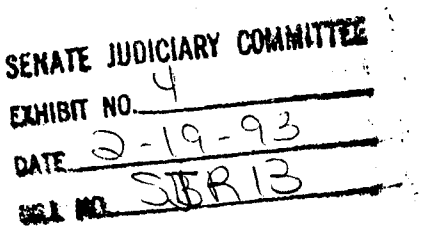
3. Page 1, line 11 through page 2, line 1.
Strike: sections 1 through 3 in their entirety
Insert: "Section 1. Section 70-27-115, MCA, is amended to read:
"70-27-115. **Defendant's appearance and answer.** On or before the day fixed for ~~his~~ the defendant's appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. In any case, the defendant shall answer the complaint and summons within 10 days."
{*Internal References to 70-27-115: None.*}"

Amendments to Senate Joint Resolution No. 13
First Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 19, 1993

1. Page 4, line 4.
Following: "Montana"
Insert: "and follow the clear mandate of the IGRA that was intended to limit the state's role to prohibiting types of gambling on the reservations that are not permitted in Montana generally and not to regulate other types of gambling on the reservations that are permitted in Montana generally"



MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 16, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Jody Bird

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 23, SB 368, SB 4, SB 5, SB 242
Executive Action: SB 70, SB 229, SB 238, SB 124, SB 251

HEARING ON SB 23

Opening Statement by Sponsor:

SEN. GARY AKLESTAD, Senate District 6, Galata, said this bill revises the laws relating to the investigation and removal of children from the home in cases of suspected child abuse or neglect. He said that the changes are not major but are necessary so that state law does not conflict with federal law.

PROVISION 1: Section 1, 43-3-201, page 2, lines 4 and 5. Change "reasonable cause to suspect" to "reasonable cause to believe." This is language that is included in other state laws.

PROVISION 2: Section 2, 43-3-202, page 5, lines 19-24. Mandates a third party at the presence of visual or audio taping while a child is being interviewed. The third party would monitor the interview and see that the professional conducting the interview, i.e., social worker, county attorney, or peace officer, does not ask the child misleading questions. The third party may be the child's guardian ad litem.

PROVISION 3: Section 5, 41-3-403, page 9, lines 1-4. The Department of Family Services would have to give notification to the parents within four hours of that child being taken away.

Proponents' Testimony:

SEN. JIM BURNETT, Senate District 42, Luther, presented written testimony. **EXHIBITS 1 through 9**

Dr. John Cannell, psychiatrist, Missoula, presented written testimony. **EXHIBITS 10 through 15**

Jerry O'Neill, Vocal of Montana, discussed the problems faced by a friend who has been charged with child abuse.

Mary McCue, Montana Clinical Mental Health Counselors Association (MCMHCA), declared that MCMHCA has had experience working with children who have been repeatedly abused or neglected and with parents who have wrongfully been accused of abusing their children. For this reason, they support this bill and believe it provides protection to parents unjustly accused and that it won't hinder abuse investigations.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DUANE GRIMES referred to **SEN. BURNETT'S** amendments which state criminal charges must be filed within 20 days. He inquired if 20 days would give adequate time to file a complaint when there really is a major threat to a child. **SEN. BURNETT** said his amendment came from SB 41. Under the present system and under civil law, a child can be taken from his home and the parent will not be charged; therefore, there's no recourse for the parent. Under criminal law, law enforcement must charge the perpetrator who then has recourse to address the conflict. Currently, since

law enforcement can operate under civil and criminal law, the systems usually favor criminal law. Giving 20 days is adequate time to make the determination, but law enforcement can delay the time to 60 days.

REP. HOWARD TOOLE asked **SEN. BURNETT** if he sponsored a bill similar to SB 23, what happened to it, and whether the amendment taken from that bill was reviewed by the Department of Family Services. **SEN. BURNETT** responded that **REP. TOOLE** was referring to SB 41, which did not pass the Senate. The bill was reviewed by DFS, and they were opposed to some of the provisions which were mentioned in **SEN. AKLESTAD'S** introduction.

REP. TOOLE asked the same question of **Hank Hudson, Director of DFS. Mr. Hudson** said he had not seen the amendment but understands that it required that a person be charged with a crime within a "certain number of days." He added this was, in some form, part of SB 41, and the DFS opposed it at that time. One of the reasons DFS opposed this was because it would stifle one of the vehicles that the DFS uses to keep families together: programs in which the family agrees to cooperate. The only due course would be the alternative to file charges.

REP. TOOLE asked **Mr. Hudson** what impact this amendment would have on DFS. **Mr. Hudson** asserted that it would be a significant impact on the DFS, courts, and the attorneys. Every case involving abuse is considered a criminal case, and it will change the nature of the DFS system.

REP. RANDY VOGEL referred to page 5, lines 19-24, and asked **SEN. AKLESTAD** if he had ever been present during the course of an interview with a child in a neglect or abuse situation. **SEN. AKLESTAD** said he has never had the opportunity. He mentioned that it is difficult to sit in one of these interviews. He tried, through the courts, to view videotaping of an interview and was not able to do so. He said these are "in-house" operations.

REP. VOGEL said that he has had to interview neglected and abused children, and they are very fragile; he wondered why, if they're being videotaped, there should be a third person in the room. **SEN. AKLESTAD** said many times, one of the parents or both parents are videotaping the interview; this is why it may be necessary to have a third party person in the room to make sure the appropriate questions are being asked. **SEN. AKLESTAD** thinks that a professional needs to ask professional questions without getting involved with the parents and the child. He said that the problem with not having a professional third party is that videotape is so limited and protected.

REP. SCOTT MCCULLOCH said he has been teaching for ten years and he has been involved in situations where he knows parents neglect and abuse their children. Although he understands how a third person may be necessary in many of these cases, he also knows

that too many adults in a room, especially strangers, could confuse and scare children. He asked **Mr. Hudson** how he felt about that and the entire bill. **Mr. Hudson** said DFS is comfortable with the bill, and the requirement to notify families within four hours, or as soon as possible, is absolutely necessary. The change in the standard is a slightly higher standard, which is acceptable. The third party issue is one which has generated the most controversy. DFS is not opposing that, but representatives from DFS have interviewed third-party professionals and parents who have been in this situation. Most had given the same answer - that children are scared already, and the more people in the room, the harder it will be for children to talk. It is DFS's responsibility to find that third party; if parents don't trust DFS now, it will be difficult to find a third party who will be trusted by the parents.

Mr. Hudson stated that DFS doesn't discuss its cases publicly, and it doesn't bring cases before the legislature because of standards of confidentiality. On the other hand, DFS wants to improve and do a better job; therefore, DFS doesn't oppose the bill.

Closing by Sponsor:

SEN. AKLESTAD said SB 23 strengthens the law for people who have been wrongfully accused of child abuse. He believes it is a step in the right direction. When dealing with criminal law, a person is innocent until proven guilty. In this area, you are guilty until proven innocent, and **SEN. AKLESTAD** is not sure that is right, even under the realm of criminal law. The purpose of this bill is to try to subject some reasonableness into the statute. It protects the parent, children and still allows DFS to do its job in a reasonable manner.

HEARING ON SB 368

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said this bill agrees to the partial withdrawal of the Confederated Salish and Kootenai Tribes to Public Law 280 jurisdiction on the Flathead Reservation. He said that SB 368 represents an historic mark in this state's relationship with the Confederated Salish and Kootenai Tribes (CSKT).

SEN. DOHERTY explained that the idea of retrocession is to step back from concurrent state jurisdiction and to allow tribal jurisdiction. Civil matters are described on page 2, lines 1-8 of the bill. The bill would allow the Attorney General and the Governor, in the case of criminal matters, to negotiate with the tribes for an agreement. In the case of civil matters, the Governor and the tribes would negotiate and try to come to an

agreement.

Proponents' Testimony:

Michael T. Pablo, Chairman, Confederated Salish & Kootenai Tribes, presented written material. **EXHIBIT 16**

Majel Bird, Lead Prosecuting Attorney, Confederated Salish & Kootenai Tribes, stated that SB 368 would allow the tribes to assume criminal, misdemeanor jurisdiction over all Indians on the reservation. According to the Montana Uniform Trial Report, this would be approximately 400 to 450 new misdemeanor cases. Last year the arrests in Lake County were approximately 930, of which 438 were Native American people; therefore, they are looking at increasing the current case load in their tribal court by 400 to 450 new cases.

To give the committee an idea of how effectively the tribes can assume this new case load, **Ms. Bird** gave an overview of the tribal court. In 1992, there were 98 criminal cases, 31 child protective cases and 58 juvenile delinquency petitions. In the handling of criminal cases in the Salish & Kootenai Tribal court, there is no distinction between Indian and non-Indian victims. The court has two prosecuting tribal attorneys, two attorneys who are defenders, an attorney chief judge, and an attorney of the appellate panel; therefore, the tribe has professional people from the bottom to the top.

Law enforcement consists of 11 tribal officers, nine of which are post-certified and eligible for cross-deputization. There is a full-time probation officer. During this past year there were times when the tribe always had three officers on duty, compared to Lake County, which had only one officer on duty at night. The jail is capable of holding 22 prisoners, and it averages from 5 to 8 prisoners per day.

Ms. Bird referred to a letter from the Missoula County Commissioners supporting this bill; they feel that the tribe has made concessions to accommodate local concerns by taking felony jurisdiction out of the bill and only asking for partial retrocession of misdemeanor crimes.

Ms. Bird said she believes due process has been a very big issue for Indian people. In the tribal system, every defendant has a court appearance within 48 hours, consistent with federal law under the 1992 Rider case. All of the people have representation at their initial appearance unless they are arrested on a weekend, and then they will have representation on the following Monday morning. **Ms. Bird** noted that **SEN. BILL YELLOWTAIL, Senate District 50, Wyola,** has been compiling statistics for the Tribal Legal Department; some of his statistics show that people have sat in the Lake County Jail for 27 days before they ever had an opportunity to see a public defender.

Ms. Bird discussed the services available for her people in terms of rehabilitation. Ninety percent of the cases run through their judicial system are alcohol-related. This is a problem specific to tribal populations. The CSKT provides community services that are culturally relevant and designed specifically to combat this problem. There is a tribal alcoholism program, one of the biggest programs for an Indian tribe in the nation; there is a tribal mental health program; alternative sentencing through the adult probation officer which includes house arrest and community service.

One of the main issues, according to **Ms. Bird,** is that the tribe can provide more effective restitution to a victim than Lake County can. When a tribal judge orders restitution against a defendant, the Salish and Kootenai tribe attorney can use that judgement to attach the defendant's tribal/county dividend. The Salish and Kootenai tribal people all received $1,200 in per capita dividends per year. Therefore, if restitution is necessary, the dividend can be attached. This cannot be done without a tribal court order.

Ms. Bird discussed briefly the Salish and Kootenai Tribe code. The criminal sections were adopted in 1982, and it is revised as necessary. Out of this code in 1982, the tribe used a lot of the same language use in the Montana Code Annotated (MCA) and adopted the 1970 revision of the laws. The tribal laws are very similar to MCA laws. The major difference is that penalties are restricted by the Indian Civil Rights Act to apply $5,000 and one year in jail. In criminal activity, the Indian Civil Rights Act limitation does not limit the CSKT; the tribe currently has people who are in tribal jail for three years.

A proposed law enforcement agreement was submitted to the tribes by the county, the main thrust of which was to only transfer misdemeanor jurisdiction to the trials. That is exactly what the CSKT is asking for now. They are not asking for anything more than misdemeanor jurisdiction over Indian people on the reservation.

In closing, **Ms. Bird** said that the Supreme Court has stated that nothing in the act was meant to undermine or destroy existing tribal governments. Without partial retrocession, the CSKT continues to be restricted from full, effective self-government.

Jack Worshow, Probation Officer for CSKT, stated that there was no probation officer in place when he was hired. He implemented the probation officer program as well as a restitution program.

Joe MacDonald, private citizen, presented written testimony. **EXHIBIT 17**

Joseph Mazurek, Montana Attorney General, stated he believed it appropriate to comment on this legislation since the state is charged with responsibility under this act to consult with

Governor Racicot until an agreement is reached. He said he and **Governor Racicot** believe that SB 368 makes a reasonable attempt to address the issue. The Department of Justice is committed to working with local government to ensure that they are protected in that process. The Department of Justice believes it is important that government consult with affected parties, including local government, before entering into agreements.

Attorney General Mazurek emphasized that negotiations and their subsequent agreements are much preferable to litigation and disputes such as these, and he also believes that holds true in water negotiations, gaming, taxation and other matters. He believes that this legislation contemplates those sort of discussions, and he pledged everyone's cooperation beyond what is required of the bill in working with the Governor to try to reach agreement. This proposal is a much more reasonable approach from what was offered in 1991, and he asked the committee for its very serious consideration.

The following individuals support SB 368:

REP. FLOYD "BOB" GERVAIS, House District 9, Browning
REP. JAY STOVALL, House District 98, Billings
Brenda Desmond, Indian Law Clinic, Missoula
Martina Savich, Board of Directors, Montana Human Rights Network
Board of County Commissioners, Missoula County. EXHIBIT 18

Opponents' Testimony:

Mark E. Nelson, private citizen, Ronan, presented written testimony. **EXHIBIT 19**

REP. ERVIN DAVIS, House District 53, Charlo, expressed his opposition to SB 368 because this legislation "ought not to interfere with local problems and people's differences." He said that most people don't understand the jurisdictional issues involved, either with or without retrocession. **REP. DAVIS** affirmed that one of the biggest problems is interracial marriages; if retrocession does occur, it will cause divisiveness within individual households.

Mike Hutchin, Chairman, Lake County Board of Commissioners, presented written testimony. **EXHIBIT 16**

Dave Stipe, newly elected Commissioner, Lake County Board of Commissioners, said that one thing not being worked at well is cooperation. While there is a Cooperative Law Enforcement Agreement, the people of the reservation and Lake County are not cooperating. **EXHIBIT 20** The Flathead Reservation is very integrated racially, and a substantial portion of tribal members have non-tribal members in their immediate family. This is not a case of two groups being functionally separate. This makes it very impractical for two separate law enforcement agencies to

function completely independent of each other. **Mr. Stipe** believes there should be a cooperative effort by both sides with open communications. He would like to see the people of Lake County live and work side by side with minimal amount of tension.

Joe Gelrich, Lake County Sheriff and Coroner, said that **Mr. Gelrich** promised **SEN. DOHERTY** two years ago that Lake County would do the best it could to work out an agreement so this legislation would not be brought up again in the 1993 legislature. There have been three meetings over the past two years, one of which was with the Attorney General's office. In 1991, leaders of Lake County drafted a proposed agreement **(EXHIBIT 20)** that addressed all concerns addressed two years ago. Since then, there has been no response to this proposal. **Mr. Gelrich** wished the committee could have heard testimony two years ago or to have heard the testimony of **Doris Poppler, U.S. Attorney** in which she said the hardest part of her job was explaining to people on the other reservations why their crimes were not prosecuted. She said the CSKT had the best system of any reservations in Montana. **Mr. Gelrich** asked the committee to give Lake County a chance to improve on its system.

Mitchell Young, Deputy County Attorney, Lake County, said this bill is a preferable commitment than the 1991 proposal. He noted, however, that what this current bill does not have is any kind of concrete details for a grievance.

Arthur Barber, Bureau of Indian Affairs, stated that he has worked for over 100 tribes during his career. Those tribes have either had their own tribal police or let the Bureau of Indian Affairs provide it. Their level of services range from totally inadequate to very marginal - nothing would pass for adequate law enforcement services, both in the law enforcement area or the judicial side. Most of the problems obtaining law enforcement, however, was from political interference and the federal government not providing proper funding or staffing. **Mr. Barber** feels that the CSKT has the one of the best law enforcement offices and judicial systems in the country.

Glen Frame, private citizen, Former Lake County Sheriff and Coroner, Lake County, stated that he fully agrees that the tribe has good police officers, and he believes their criminal justice system is very good. He objected to the method by which this is being brought up; he doesn't believe this is a legislative act issue, and the legislature should not be involved. **Mr. Frame** said that most of the people living on the reservation and Lake County don't really understand partial retrocession and wouldn't care anyway. The only people who do care should be negotiating the law enforcement agreement. The present agreement is the very best that can be brought about; if it needs to be fine tuned, then he agreed to fine tune it. **EXHIBIT 21**

Questions From Committee Members and Responses:

REP. VIVIAN BROOKE asked **Attorney General Mazurek** questions regarding his work with the Water Compact Commission as a Senator, whether he worked with tribal, state and federal jurisdictions and involved county government. **Attorney General Mazurek** said the counties have been involved, and it has been the practice of the Reserve Water Compact Commission to visit the affected area and discuss negotiations. They encourage local people to follow the negotiations, to attend sessions and to participate in building negotiation strategies.

Attorney General Mazurek stated that this is a sovereign-to-sovereign, government-to-government relationship, and the committee's job and **Attorney General Mazurek's** job, as elected officials of the state of Montana, is to ensure that the voice of local government and local citizens are taken into account in those discussions.

REP. ANGELA RUSSELL asked **Mr. Smith, attorney, CSKT,** to address what treaty negotiations entail. **Mr. Smith** said the final concept of state-tribal relations is that it is a government-to-government relationship. Throughout the history of this government, under the U.S. Constitution, Indian people are unique among this country in that they have a political identity, and that political identity is their government. The CSKT is not just a racial minority; it is a sovereign government which entered into agreements with the federal government before the state or counties existed. He explained that four counties touch the Flathead Reservation, but of them are exclusively on the Flathead Reservation. There are four political subdivisions of the state to deal with.

REP. RUSSELL asked what kinds of savings retrocession will effect. **Mr. Smith** said the fiscal note attached to the full retrocession bill in the 1991 session did not quantify the savings, but it did mention there would be savings to the county and state. Based on **Mr. Smith's** analysis of the Indian percentage in the Lake County jail, approximately 50 percent of those inmates, on average, are Indian; most of those misdemeanor cases would reduce the counties' costs significantly. In terms of civil areas, such as juvenile delinquency, the state institutions would still pick up the costs of those cases.

REP. RUSSELL noted her concern about the disparity in numbers of Indian people within the prison system. She asked why Lake County sends so many Indian people to prison compared to other counties in the state. **Sheriff Gelrich** said that the main problem with tribal members in the Lake County jail is their addiction to alcohol. **REP. RUSSELL** asked **Sheriff Gelrich** if this problem is particular to the Salish and Kootenai Tribe, to which **Sheriff Gelrich** said it is not. He added that it is not a racial problem but a tremendous problem with alcohol and drugs.

REP. RUSSELL said she recognizes that Indian people have a problem with alcohol but that counties with larger Indian populations than Lake County do not send this number of people to prison. **Ms. Bird** reminded the committee that on the other Montana reservations with federal jurisdiction, those people are sent to federal prisons. There are about five to eight people in jail in Lake County on the average per day; as she testified before, the Salish and Kootenai Reservation has programs set up specifically to deal with alcohol problems.

REP. TOOLE asked **Sheriff Gelrich** why Lake County law enforcement objects strongly to the bill when it is almost identical to the cooperative agreement proposal in terms of limiting tribal prosecution to misdemeanors with no felonies. **Sheriff Gelrich** said this bill is just a "foot in the door" to throw out the PL 280 concept. A felony is a felony; he believes that if a person is convicted of a felony, he should go to prison. Under this bill, there are certain felonies being negotiated through **Governor Racicot**, and he believes they should continue to go through state court.

REP. TOOLE stated that opponents have commented about the quality of the tribe's judicial and law enforcement systems. He doesn't think that's a concern of the **Sheriff** and asked his opinion. **Sheriff Gelrich** said he believes the tribe can handle the misdemeanors, but they should not be handling felony cases.

REP. TOOLE noted that one of the things included in the proposal is that Lake County officers who are post-certified would be appointed as tribal officers, and tribal officers that are post-certified would be appointed as Lake County deputies. He asked **Sheriff Gelrich** whether that is in place now. **Sheriff Gelrich** said that is not in place now and that no one wants that to take place.

REP. TOOLE said that, basically, everything in this bill is acceptable to **Sheriff Gelrich** and his staff, except that they want the county, not the state, to control certain jurisdictions. **Sheriff Gelrich** pointed out that in the agreement, anything that looks like it may be a felony is discussed by the county attorney's office and the tribal legal department; they decide what is and what is not categorized as a misdemeanor or felony and whether these convictions are going to be handled in tribal court or state court.

REP. TOOLE said there has not been an agreement on some of these subsidiary issues to this point; he wondered whether, if this bill is passed, there is any reason why Lake County can't reach an agreement on these subsidiary issues once the basic print work is in place. **Sheriff Gelrich** said he didn't want to lose any portion of the system now in place. He indicated that there must be some agreement as to how the Indian's misdemeanors would be handled.

REP. VOGEL addressed his questions and comments to **Jack Moser, probation officer. REP. VOGEL** referred to a statement by **Ms. Bird** that this bill is necessary to maintain the cultural relevancy and rehabilitation of the tribe. **Mr. Moser** said this bill is not necessary. **REP. VOGEL** also asked what effect the bill would have on case loads, jail expansion and costs. **Mr. Moser** said it appears it would double the case loads, but the costs would still be less than if the cases were handled by the federal government.

REP. CLARK said that **Mr. McDonald's** testimony was that Lake County would save money in misdemeanor crimes, court care and prison costs if the bill passes; he asked **Mr. McDonald** to explain. **Mr. McDonald** said the county would not have to board those prisoners anymore and would not have hearings in the Justice of Peace court. From that answer, **REP. CLARK** assumed the county is saving money and shifting the burden to the tribe. **Mr. McDonald** agreed with **REP. CLARK.**

REP. LIZ SMITH asked **Mr. Pablo** why he was not able to respond to the Lake County commissioners in regard to the last two years' communications from them. **Mr. Pablo** said he did return a response in October 1991. He said the agreement has not changed since then. The point of this bill is misdemeanors, and everything else has to be negotiated. The Governor and the Attorney General accepted those negotiations.

Closing by Sponsor:

SEN. DOHERTY affirmed that the CSKT has a government-to-government negotiation with the State of Montana, and it is the State's job to determine the best policy. He mentioned the question regarding the shifting of costs and said that operational charges would come from the CSKT.

Regarding federal issues, **SEN. DOHERTY** said there's a new administration in Washington, D.C.; if opponents don't want local and state input and if they take this bill to Washington, it's going to be a lot harder. What's being proposed is something that's prudent, cautious, and something that will involve a lot of negotiation.

HEARING ON SB 4, SB 5, SB 242 Combined

Opening Statement by Sponsor:

SEN. JIM BURNETT, Senate District 42, Luther, reviewed these three bills which include constitutional ballot issues. **EXHIBITS 22 through 25**

SB 4: Amending the Montana Constitution to transfer the authority to determine who may be admitted to the State Bar from

the Montana Supreme Court to the legislature. **SEN. BURNETT** read a letter from a constituent who has been denied the Montana State Bar examination by the Supreme Court even though he took and passed the California Bar examination the first time. The California Bar examination is considered one of the toughest in the country, but the Supreme Court has changed the rules and made it impossible for this person to take the examination for the Bar in Montana.

SB 5: Amending the Montana Constitution to abolish the requirement that a Supreme Court justice or District Court judge be admitted to the practice of law in Montana prior to the date of appointment or election. **SEN. BURNETT** said this would allow any person of knowledge, character and capability to be eligible to run for judge.

SB 242: Amending the Montana Constitution concerning the Judicial Standards Commission. **SEN. BURNETT** said this calls for the removal of a judge by a trial procedure.

Proponents' Testimony:

Jerry O'Neill, private citizen, Kalispell, spoke on SB 5. He mentioned that many of our best state and national leaders did not have law degrees, i.e. Abraham Lincoln and Harry Truman never went to law school but were otherwise trained and prepared to take on the responsibility as a judge. It is **Mr. O'Neill's** opinion that if only attorney's are elected as judges, it doesn't give persons, who may be just as experienced in law as attorneys, the chance to run for a judicial position.

Hugh Giuseppe, private citizen, testified in support of SB 5. He said he does not believe there is enough access to courts for common people. **Mr. Giuseppe** also believes that lawyers are not the only "capable human beings" to serve on the Supreme Court. In essence, this bill is saying that every homemaker, doctor, teacher, welder, and accountant in a constituent's voting district is not capable to determine who they want to interpret the laws by which they, themselves, are governed. He believes people have the right to vote for whomever they want to be a judge, whether that person has a law degree or not. **Mr. Giuseppe** said special interest groups should not decide who citizens can vote for.

George Stapleton, private citizen, expressed his distress about this bill. He reprimanded both the Senate Judiciary and House Judiciary committees for passing amendments to which he was opposed.

Arwood Stickney, private citizen, spoke in support of SB 4, SB 5, and SB 242. He brought a copy of the Bill of Rights to the committee and said 99 percent of laws are taken from the Bill of Rights.

Pascal Redfern, owner of a paralegal business, Missoula, stated he supports SB 4, SB 5, and SB 242. Many people cannot afford attorneys, and paralegals provide the services most people need. People who want to run for judicial branch of office cannot do so because of the Constitution. He would like the people to decide in elections who has the working knowledge to be judges.

John Rice, private citizen, said he supports SB 242 because he believes the general public needs better access to the court system. He also added that many people cannot afford an attorney and that seeking legal advice from a paralegal is just as good.

Opponents' Testimony:

Vicki Soderberg, Executive Director, Montana Paralegals Association, spoke in opposition to SB 242. She said the proponents are making some assumptions about requirements for the Bar that are not true. She said the bill doesn't indicate how changing the oversight structure of the Bar from the Supreme Court to the legislature will assist in providing quality, low-cost legal services.

Patrick Chenovick, Supreme Court Administrator, spoke briefly on SB 4 and SB 5. He said that the current administration of the Bar exam maintains the competency of those individuals licensed. Practicing law - whether paralegal, lawyer or judge - requires qualifications. He urged the committee not to pass this bill.

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: **SEN. BURNETT** will close on March 17th as the committee's presence was required on the House floor.

EXECUTIVE ACTION ON SB 70

Motion/Vote: **REP. BROWN MOVED SB 70 BE CONCURRED IN.** Motion carried 17-1 with **REP. WHALEN** voting no. **REP. BROOKE** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 229

Motion/Vote: **REP. BROWN MOVED SB 229 BE CONCURRED IN.** Motion carried unanimously 18-0. **Rep. Larson** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 238

Motion/Vote: **REP. WHALEN MOVED SB 238 BE CONCURRED IN.** Motion carried unanimously 18-0. **REP. VOGEL** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 124

Motion: **REP. WYATT MOVED SB 124 BE CONCURRED IN.** Motion carried unanimously 18-0. **REP. TOOLE** will carry the bill on the House floor. Bill scheduled for the consent calendar.

EXECUTIVE ACTION ON SB 251

Motion: **REP. SAYLES MOVED SB 251 BE CONCURRED IN.**

Discussion:

Motion: **REP. TASH** moved an amendment to strike the effective date upon **SEN. TOWE's** request. See Standing Committee Report.

Vote: The question was called on **REP. TASH's** amendment. Motion carried unanimously 18-0.

Vote: **REP. TOOLE MOVED THAT SB 251 BE CONCURRED IN AS AMENDED.** Motion carried unanimously 18-0. **REP. TOOLE** will carry the bill on the House floor.

ADJOURNMENT

Adjournment: 12:30 p.m.

Russell Fagg

REP. RUSSELL FAGG, Chairman

Beth Miksche

BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-16-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird			✓
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 251 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. Toole

1. Title, line 9.
Following: ";"
Insert: "AND"

2. Title, line 10.
Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 4, lines 9 and 10.
Strike: section 3 of the bill in its entirety

-END-

Committee Vote:
Yes 15, No 2.

591627SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 70 (third reading copy -- blue) be concurred in .

Signed: Russell C. Fagg
Russ Fagg, Chair

Carried by: Rep. Brooke

Committee Vote:
Yes 17, No 1.

591605SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate BIll 124 (third reading copy -- blue) be concurred in and be placed on consent calendar .

Signed: Russ Fagg

Russ Fagg, Chair

(Carried by: Rep. Toole, if necessary)

Committee Vote:
Yes 12, No 0.

5916063C.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 238 (third reading copy -- blue) be concurred in .

Signed: Russell C. Fagg

Russ Fagg, Chair

Carried by: Rep. Vogel

Committee Vote:
Yes 15, No 0.

591609SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 229 (third reading copy -- blue) be concurred in .

Signed: _____
Russ Fagg, Chair

Carried by: Rep. Larson

Committee Vote:
Yes 12, No 6.

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-16-93 **BILL NO.** SB 251 **NUMBER** 18

MOTION: Motion to pass carries unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-16-93 **BILL NO.** SB 124 **NUMBER** 18

MOTION: Motion to pass carries unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-16-93 **BILL NO.** SB 238 **NUMBER** 18

MOTION: Motion to pass carries unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-16-93 **BILL NO.** SB 229 **NUMBER** 18

MOTION: Motion to pass carries 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-16-93 **BILL NO.** SB 70 **NUMBER** 18

MOTION: Motion to pass carries 17-1

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

MONTANA STATE SENATE

SENATOR JAMES H. "JIM" BURNETT
SENATE DISTRICT 42
HOME ADDRESS:
P.O. BOX 4460
LUTHER, MONTANA 59051
PHONE: (406) 446-2489

HELENA ADDRESS
CAPITOL STATION
HELENA, MONTANA 59620
PHONE: (406) 444-4800

EXHIBIT 1
DATE 3-16-93
SB 23

PRESENTATION IN SUPPORT
SENATE BILL 23

I support Senate Bill 23 as an effort to focus attention on the Department of Family Services.

This agency has maneuvered themselves into positions of having power to take children without any evidence and without any appeal. We have discovered that today's family has no civil rights, as far as child abuse legislation and enforcement is concerned.

A whole ideology of "child advocacy" has developed, based not on facts, but assumptions. Nothing in the law guarantees your protection from a malicious accusation of child abuse or that your particular family life style is objectionable to someone who for reasons of their own, call DFS or law enforcement complaining your child is being abused.

"Power tends to corrupt and absolute power corrupts absolutely". The case worker has absolute power. Unfortunately, the department operates under the cloak of secrecy and enforced by the courts.

The department functions under both civil and criminal law. Their action under civil law requires the family to prove their innocence or "preponderance of the evidence". I believe that if a child is removed from the family, it must be under criminal law

which places the burden of proof on the Department "beyond a reasonable doubt."

Under criminal law, the accused shall have the right to face the accuser and have trial by jury which is being denied under civil law.

I offer an amendement to Senate Bill 23 that if criminal charges are not filed within twenty days of emergency placement, the child must be returned to the family and in all cases, an emergency placement of a child may not continue beyond sixty days.

I urge the acceptance of this amendment and passage of Senate Bill 23. It is essential that the family be placed on a level playing field with the Department of Family Services.

EXHIBIT 2
DATE 3-16-93
SB 23

Amendments to Senate Bill No. 23
Third Reading Copy

Requested by Senator Burnett
For the House Judiciary Committee

Prepared by Eddye McClure
February 23, 1993

1. Title, line 14.
Following: "FACILILTY;"
Insert: "REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF SEXUAL ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME;"

2. Title, line 23.
Following: "41-3-301,"
Insert: "41-3-401,"

3. Page 8, line 12.
Following: "parents."
Insert: "Criminal charges must be filed against a person believed by a county attorney, the attorney general, or an attorney hired by the department to have sexually abused or endangered a child. A person charged with sexual abuse or endangerment is entitled to a jury trial.

(4) If criminal charges are not filed within 20 days of emergency placement, the child must be returned to the home unless clear and convincing evidence exists to support an allegation that the child, if returned to the home, is in imminent danger of being sexually abused or endangered by a person in the home. If evidence of imminent danger exists, the child may be removed from the home only for a period of time sufficient to allow the development of the required criminal complaint. In all cases, an emergency placement of a child may not continue beyond 60 days without criminal charges being filed against the person believed to have sexually abused or endangered the child."
Renumber: subsequent subsection

4. Page 8, line 17.
Following: line 16
Insert: "Section 5. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) ~~The~~ After filing criminal charges alleging sexual abuse or endangerment against a person, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services ~~shall be~~ is responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law

enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such petitions shall~~ Petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure ~~shall~~ apply except as ~~herein~~ modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, ~~shall~~ must be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If ~~such~~ a person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party ~~where~~ when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice ~~shall~~ must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except ~~where~~ when the proceeding is instituted or commenced at the request of the department ~~of family services~~, a citation ~~shall~~ must be issued and served upon a representative of the department prior to the court hearing.

(9) The petition ~~shall~~ must:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of ~~his~~ the youth's parents or guardian or the person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the

motion of any party appoint counsel for any indigent party.""
{*Internal References to 41-3-401:*
41-3-404x *41-3-607x (2)*}

Renumber: subsequent sections

EXHIBIT #2
DATE 3-16-93
SR-23

EXHIBIT 5
DATE 3-16-93
SB 23

To Whom It May Concern:

Recently my husband of thirteen years accepted a plea bargain and was sentenced to nine years imprisonment for crimes he did not commit. He choose to take a plea bargain for several reasons. The first and most important reason is as follows:

1. He is not guilty, but felt that to expose and drag his children through the horrendous and traumatic drama of a courtroom setting was a vile and damaging psychological prospect. It still continues to be.

2. The attorneys, at the time, presented a completely different version of deferred imposition and the probation, to say nothing of its residual effects on his or my personal and professional lives.

It has become abundantly apparent that any damage to the children that could and should have been avoided by accepting a plea bargain was eliminated by Child Protective Service workers dragging the children to court. This only serves to feed his (C.P.S. workers) and the children's power and manipulation trips, creating undue stress and anger that may never be resolved, even in intense psychiatric therapy.

He now wishes to clear his name, reputation and repair his own psychological distress and receive justice and vindication that has so far been denied him.

I, myself, have stood back and apart from this whole process due to my horror, anger and amazement of the situation, all the while believing the whole disaster would be rectified and cleared up before it progressed to this level. I have been unwilling to allow anyone to trap me into any statement. The reasons are relatively unimportant except for these two:

1. I have allowed other people to hear and believe what they wanted at any given moment, because it was easier than fighting.

2. I have become pregnant and felt if I shut my mouth and adopted a "hands off" policy, C.P.S. and everyone else would leave me alone. I would be free to raise my baby alone and in peace. However, this does not appear to be a reasonable assumption. Therefore, I want to be on record instead of allowing everyone to accuse or assume what I actually think, said, wrote or believe.

I continue to believe and fear that Child Protective Service will view this letter as a justifiable cause to remove my baby at birth. This action (letter) is undertaken with the greatest apprehension and trepidation of retaliation by C.P.S. in Red Lodge.

EXHIBIT 4
DATE 3-16-93
SB 23

Persons interested in or has been affected by
The Department of Family Services
Compiled by Senator Jim Burnett

Brian & Marion Bersuch
305 Hilger
Lewistown, MT 59457
538-7832

Cathy Peterson
500 South 6th
Hamilton, MT 59804
363-3551-day/363-3545-nite

Gina Goodyear
2028 Custer
Billings, MT 59102
656-7112

Sarah Lipscomb
120 W Kent
Missoula, MT 59801
721-1499

Dr. Dean Anderson
103 Corral Trail
Lewistown, MT 59450
538-8248

Frank B. Fitzgerald
3000 Hallowell Lane
Billings, MT 59101
259-5866

Kay Barth
P.O. Box 186
Alberton, MT 59820
626-4451-day/722-4473-nite

Nikki and Carl Steele
406 5th Avenue N
Lewistown, MT
538-2347

Ed Miller
902 Lane II
Powell, WY 82435
(307)-754-3858

Vikey Vincent
104
Fort Harrison, MT 59636
443-2730

Sue Peterson
219 S. 8th Street
Hamilton, MT 59840
538-2347

Fred Lark
KXLO Radio
Lewistown, MT
366-2015 / 538-3441

Norm Kolpin
2012 Forest Park
Billings, MT 59102
656-6244

Cindy Williams
900 Abbey #428
Helena, MT 59601
College Student/442-4334

Morris & Sharon Miller
2212 4 Ave. No.
Great Falls, MT 59401
761-0482

Dennis D. Garrick
306 HIghland Ave.
Plentywood MT 59254
765-1545

R.W. Heineman P.C.
P.O. Box 313
Wibaux, MT 59353
795-2427

Bernice Seminole
Lame Deer, MT

Kenneth E. Haugen
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Missoula, MT 59802

Charles Squires
Norma Squires
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OVER

Dr. Dean Anderson
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538-8248 / 538-2419

Jerry Henderson
P.O. Box 5722
Helena, MT 59601
443-2730

John R. Foster
Mental Health Counselor
Box 581
Lewistown, MT 59457
538-2476

Mr. & Mrs. Gerald Bartow
217 Ave E
Roundup, MT 59072
323-2533

Bud & Vonnie Rist
410 No. 33rd St
Billings, MT 59101
252-2071

Richard Raugh
208 Caroline Rd
Kalispell, MT 59901
756-6529

Kenneth & Valinda Sandou
838 N 5th W
Missoula, MT 59802

Richard Clark
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Missoula, MT 59806
728-1475

M.W. Belledeaux Sr.
15420 Thayer Road #3
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273-0196

Valorie Etter
1814 Hauser
Helena, MT 59601
443-6331

contacts re:DFS

Rosetta Latham
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Betty Esplin
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Laurel, MT 59044
628-8096

Jerry Henderson
P.O. Box 5722
Helena, MT 59604
443-2730

C.R. Owens
4235 McGillen
Red Lodge, MT 59068.
446-1294

Pauline Adamson
124 S. Platt
Red Lodge, MT 59068
446-3933

Pascal Red Firm
P.O. Box 3228
Missoula, MT 59806

John & Eve Fisher
RR 1, Box 4
Joliet, MT

Sandra Foster
P.O. Box 745
Absarokee, MT
328-4804

Jerry O'Neil
202 Helena Flat Road
Kalispell, MT 59901
752-8903

Bob & Yvonne Morrissey
3208 Maser Dome Road
Silesia, MT 59041

Marcus Damian (formerly of Red Lodge)
3030 Market St.
Sand Diego, CA 92101
(619)-236-0994

EXHIBIT 1
DATE 3-16-93
SB 23

January 27, 1992

Sen. Jim Burnett
Sen. Delwyn Gage
Sen. Gary Akelstad
The Legislature 1993
Helena, Montana

Dear Senators:

It is getting closer to the time that you will be passing some serious bills in regard to the Department of Family Services, social workers, department heads and anyone involved in the system.

We feel very important pieces of evidence need to be done, namely video tapes, doctor's reports, any and all interviews and evaulations done by doctors, social workers and counselors. All this information needs to be obtained in the prescence of the parent the child is living with or an attorney representing the family before any TIA investigation or treatment agreement is started. These reports should all be given to the parent or attorney upon request. If in fact a foster home does not want the parents to know where a child is, they can obtain a court order stating so.

The social workers do feel they are God. They answer to no one. They steal your kids off the streets or school grounds without any kind of paperwork at all, and have to account to no one for their actions for at least 48 hours. In a mother's mind this is one of the most frightening situations you can put a family through. It has caused very serious problems, severe mental stress, borderline breakdowns, and in some cases even suicide. The public is protected from situations of illegal search and seisure, stopping a vehicle without probable cause, entering your home to search without a warrant, etc. Does confidentiality mean a way of getting around the legal or necessary paperwork?

Maybe if these problems are looked into and social workers made more accountable for their actions, the true purpose of the Department of Family Services, which is, <u>getting the families back together</u>, can be accomplished.

We hope and pray that you gentlemen will take into consideration all the information that has been presented to you from the families and parties that have been involved in these situations with social workers and do your very best to straighten these problems out.

Mrs. Gerald (Stub) Bartow

Mrs. Gerald (Stub) Bartow
217 4th Ave East
Roundup, MT 59072
Phone (406) 323-2533

EXHIBIT 6
DATE 3-16-93
SB 23

Dear Editor:

"Do not withhold discipline from a child; if you punish him with the rod, he will not die."
Proverbs 23/13

Do you spank your child as a form of discipline? Have you ever slapped your child's hand to prevent them from touching something they are not supposed to?

According to law, you do not have the right to discipline your own child in this manner and may be convicted of "child abuse" if you do so. Absurd as it may seem, giving your child a good 'licken' for being naughty could result in a legal nightmare for your family.

As parents of two, we have been sending our children to daycare services for more than four years. Just recently in a local daycare our female child was seized by a lone male social worker and taken for investigation which included a physical examination and photographs taken of her privates.

This was done without our knowledge and we later became aware of the incident only because our second child began to cry on our way home from the daycare about how she was afraid that "they were going to take us away!"

Why had our two children been traumatized by interrogation and examination and been photographed by strangers? A red mark on our child's behind which was received by one swat from a flimsy four-inch long flat object used as a paddle.

Because of this we were accused of child abuse, threatened with imprisonment, the loss of our children, our privacy invaded, and our children traumatized. THE LAW SAYS WE CANNOT DISCIPLINE OUR CHILDREN. We are not ashamed of spanking our children and will continue to do so when their behavior warrants it.

Nikki & Carl Steel
Lewistown, Montana

(re-type of paper article: "Parents Beware" - Editorial)

EXHIBIT #6
DATE 3-16-93
SB-23

Exhibit #6
March 16, 1993
Senate Bill No. 23

Exhibit No. 6 is a taped interview with Carl and Nikki Steel at the KXLO station in Lewistown. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 1
DATE 3-16-93
SB 23

December 2, 1992

Senator James H. Burnett
P.O. Box 4460
Luther, Montana 59051

Senator Burnett:

I am writing to you in regard to the Montana Statute that governs child abuse, neglect and dependency.

I have been confronted with a false and unfounded allegation charging me with physical abuse against my wife and children. This allegation was made out of total maliase. The Department of family services could not substantiate the allegation. However, my concern lies in the fact that there are numerous inequities involved in the investigative process as conducted by the Department of Family Services. This conduct is currently under legal advisement.

We are compelled to seek answers from our elected officials, especially those involved in the writing or the revamping of the statute as to why the Department of Family Services has been provided with the extraordingary power to invade the privacy of families with little regard to the Civil Rights Committment.

I have been told by the Department of Family Services, that due to their policy, I am unable to receive information that is contained in their case file.

We have read and interpreted the contents of the Statute of concern and we would simply like to know why the Department of Family Services policy dictates over the Montana Statute. With so much emphasis placed on Civil Rights issues held within our present day standards, it is quite apparent that this undue power that our Montana legislators has provided the Department of Family Services is in its self a direct violation of the civil rights of any citizen, and could be and should be considered a violation on the part of the lawmakers involved in the making of this legislation.

We have conversed with many people that hold the same convictions that we do concerning this poweer. We are all of agreement that child and spouse abuse is a very serious problem in this country, and that they who inflict abuse should be dealt with in accordance with the penalities as perscribed by law. We also recognize the fact that although malacious allegations are made, the recipients of these allegations are expected to take and forget what some social worker has delivered to them, eventhough the charges are

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indeed unfounded. We absolutely feel that it is time that someone with the self fortitude makes an honest and wholehearted effort to challenge the inequities contained in the Montana Statute that currently affords the Department of Family services the power that they now pocess. We do feel that the time is NOW!

As our elected official, we will certainly expect your reply to this correspondence concerning your attitude and what you may contemplate in this regard.

We are more than hopeful that the current statute can be challenged in our court system to reflect changes that will indeed provide our citizens with some civil rights..

It is absolutely unbelievable what the Department of Family Services are capable of doing to families because of their power and prestige.

Are we able to make an honest effort in regard to this issue?

I will patiently await your reply.

Respectively Yours,

Dennis D. Garrick

Dennis D. Garrick
306 Highland Ave.
Plentywood, Mt. 59254

EXHIBIT 9
DATE 3-16-93
SB 23

January 25, 1993

Senator Jim Burnett
P. O. Box 20
State Capitol
Helena, MT. 59620

Dear Mr. Burnett:

This letter is written in support of your presentation on Senate Bill 41.

Our family has been a victim of DFS. Until it happens to them or someone they know, the public remains unaware of the power of this department and how it is destroying families. I believe it is time that some control is placed on this department and the people are given some rights. Whatever happened to "Innocent Until Proven Guilty"? In no way should parents stand accused and children be removed from the home, strictly on hearsay with no evidence and no investigation. It is now coming to light, not only in Montana but throughout the United States, just how much power agencies such as this have been welding against innocent people, who have had no recourse. It is not unlike having the Gestapo appear at your door.

People employed by this agency are not above fabricating lies and then compounding them, with the victim never having access to where this information originated and without DFS ever having to supply proof. Instead of trying to keep the family intact and act in a supportive manner, they are known to pit child against parent, parent against child and parent against parent. They believe that they can rip families apart and then later bring them together and everything can be "better than it was before." Once this happens to a family, the scars are carried forever and the family is never the same again.

From our experience, I can verify that you are correct in the information that you are presenting. Safeguards must be placed to protect <u>all</u> members of a family. Families must have the opportunity to be protected from being wrongfully destroyed by the State as a result of <u>mistakes</u>, which from my observation, are tipping the scales on the opposite side of justice. You are right about an industry fostered by DFS referrals. Too many people are in the pockets of DFS. Also, I believe the system is corrupt in its placing of foster care. In our case, the "foster family" happened also to have one member employed by DFS--"double dipping", if you will. Parents and other family members should not be denied the right to see their children. Being removed from the home is traumatic enough without adding the burden of not being able to speak to those people who love and care for them the most. Any

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questioning of the children, most emphatically, should have a third party present and a transcript of that meeting available. Wronged parents are being denied the right to defend themselves.

The system as it exists is an outrage! We appreciate the opportunity to speak out and see legislation enacted to correct this growing problem. If it can keep one family from being destroyed, it will be well worth the effort.

Included with this letter is some information that might be helpful in showing how psychology professionals are perpetuating these problems.

Any information on the progress of SB41 would be appreciated.

Thank you, Mr. Burnett, for addressing this most important matter.

Sincerely,

Kathy Peterson

Kathy Peterson
500 So. 6th St.
Hamilton, MT 59840

EXHIBIT 9
DATE 3-16-93
SB 23

Richard Rough, M.S.Sp.Ed.
208 Caroline Rd.
Kalispell, MT 59901
756-6529

February 3, 1993

Senate Judiciary Committee
State Capitol
Helena, MT 59620

Dear Senate Judiciary Committee:

The Department of Family Services, Youth Court Services and the various law enforcement agencies are currently using video-taping of alleged victims when they so desire. Most of these agencies already have the necessary video equipment within local communities in Montana. The mandatory use of video-taping would not incur a great amount of expense for the State to implement. It would actually save the State money.

In order to illustrate that video-taping is an effective cost saving measure and the preferred method to be used when investigating child abuse, I would like to relate my own family's personal and traumatic experience.

When the Department of Family Services took our daughter away from the home, one of the first things they did was to make a video tape of the initial interview with her. There was no conclusive evidence of abuse produced by that interview. In fact, according to the case note summary of that interview, the caseworker stated that what my daughter described as sexual abuse "would have been very very difficult if not impossible to achieve". Furthermore, the case notes go on to state, "irregardless who the offender turns out to be, it is very very important that (our daughter) believe that (I am) the offender." Then the social worker labeled the case as substantiated, erased the tape, and needlessly kept our daughter in foster care.

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The video-recording of interviews of alleged child victims is a sound, well established method utilized by most protective service and law enforcement agencies across the country. It assures parents and those accused that the proper interviewing took place without intimidation and leading questions. In fact, it prevents the re-traumatization of interviewing the alleged child victims repeatedly. It is also a reliable record for the Court to use in future proceedings. It will assure the appropriate delivery of services to children who actually need them. It will prevent unnecessary placements. Therefore it will save money for the State and all concerned.

While my daughter was in the custody of the state they placed her in 17 placements. She was sexually assaulted several times and treated for venereal warts, syphilis and chlamydia. She was tested for aids twice and for pregnancy at least four times.

If the video-tape had been saved it might have prevented our daughter from being needlessly removed from our home; being sexually abused while in the custody of the State; and from being introduced to drugs and alcohol. It certainly would have been valuable for my defense and would have saved the State thousands of dollars in substitute care funds.

Most of the trauma experienced by our daughter and our family would have been prevented if the department had been concerned about the truth and its verification. It would have been of immense value if the video-tape of that first interview had been preserved and a copy provided to our legal counsel.

I appreciate your time and consideration in this matter. I strongly recommend that you do not eliminate the requirement of mandatory videotaping in Senate Bill 41.

Yours truly,

Richard Rough

EXHIBIT 12
DATE 3-16-93
SB 23

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JOHN J. CANNELL, M.D.
TERRY L. LANES, M.D.

March 16, 1993

To the Honorable Men and Women of the Montana State Legislature:

RE: Senate Bill 23 (Aklestad); Senate Bill 271 (Jacobson)

Thirty years ago, Kinsey documented that 25% of American women have an unwanted sexual experience prior to puberty. Legitimate, well-controlled, epidemiologically sound studies in the last 10 years have documented the same, or even higher incidence of sexual abuse. It is a problem therapists deal with every day.

I am a board qualified psychiatrist working at the Western Montana Clinic in Missoula. I work with many children and adults who have been physically and sexually abused and I know very well the effects of childhood abuse. Furthermore, I frequently work with D.F.S. caseworkers and I generally find they do a good job with this difficult and frustrating issue.

However, in the last few years the incidence of frivolous and even fabricated allegations of child abuse has dramatically increased. Often these allegations arise during child custody battles, divorce proceedings, or out of jealousy. Respected authorities such as Richard Gardiner, MD, George Ganaway, MD, Elizabeth Loftus, PhD, and Ernest Hilgard, PhD, have become alarmed at the current atmosphere. I enclose a recent Wall Street Journal editorial likening the current era to the McCarthy period and the Salem witch burnings.

Seventeen people burned to death during a 10 year period in Salem. These people were convicted on the testimony of children. In the 1950s, people accused of being Communists by the McCarthyites were denied due process. They were guilty until proven innocent and anyone who questioned McCarthy's tactics was himself or herself deemed a Communist. Reputations, careers and lives are ruined when due

process is forgotten. Like the authorities mentioned above, I believe this issue is problematic, legally, morally, and politically. Prof. Richard Ofshe of the University of California, an expert on social injustices feels that we are in the "3rd great wave of American hysteria".

It is crucial that decision makers take advice from people who are well trained in the science of psychology, psychiatry, and the human mind. Today there are numerous poorly trained, politically fervent, and morally self righteous therapists who often mislead decision makers about their training and their expertise. It is only after 4 years of college, 4 years of medical school, and 4 years of psychiatry training that I became a board qualified psychiatrist. The study of the human psyche is difficult and knowledge is rudimentary. It is crucial that we base the little that we do know on established scientific data and not on political fads, no matter how attractive they currently appear.

I support Senate Bill 23. I would like to make the following points:

1) It is important that children be taken out of the home only when "grounds to believe" that abuse has occurred exist, not just "cause to suspect". This will improve the due process rights of the accused, at least to some extent.

2) "Grounds to believe" criteria should also be used for possible injury to the child. We have all said or done something to our children that we later regret. This does not necessarily mean that our children were injured.

3) I believe the Department of Family Services would welcome an oversight committee that was appointed by an outside agency such as the county commissioners. It is my understanding that a Foster Care Review Committee currently exists in statute. It might be a fiscally sound solution to enlarge their duties to include oversight of the Department of Family Services as well as foster care. It could assume many of the duties envisioned in Senate Bill 271 sponsored by Senator Jacobson.

4) The Department of Family Services and the therapists they refer to should video tape all sessions with children or adults making these accusations. It has been shown repeatedly in reputable literature that even innocent leading questions can implant false memories, especially in children.

5) I agree with the Wall Street Journal when it states, "a sex abuse industry" has been built up in part by the Mondale Amendment of 1984. I believe that it is important to <u>limit</u> immunity from prosecution for caseworkers, educators, and professional people who encourage unsubstantiated but often very damaging allegations of sexual abuse.

Besides the above mentioned Wall Street Journal editorial, I include some recent articles from the Los Angeles Times, New York Times, and other papers. If any

members of the legislature would be interested in a more detailed presentation of this issue, I would be glad to return to Helena, either this session or next.

We should not give license to "professionals" with ulterior motives such as the religious right or the radical left to embroil this country in another shameful era that we will all regret. "Those who forget history are doomed to repeat it."

Sincerely,

John J. Cannell, MD

EXHIBIT 11
DATE 3-16-93
SB 23

Beware the Incest-Survivor Machine

By Carol Tavris

Originally appeared in The New York Times Book Review, January 3, 1993.
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How often do you suffer from the following symptoms?

- You feel that you're bad, dirty or ashamed.
- You feel powerless, like a victim.
- You feel that there's something wrong with you deep down inside; that if people really knew you, they would leave.
- You feel unable to protect yourself in dangerous situations.
- You have no sense of your own interests, talents or goals.
- You have trouble feeling motivated.
- You feel you have to be perfect.

This checklist, from Ellen Bass and Laura Davis's book "The Courage to Heal," is supposed to identify the symptoms of incest. The trouble is that the same list could be used to identify oneself as someone who loves too much, someone who suffers from self-defeating personality disorder, or a mere human being in the late 20th century. The list is general enough to include everybody at least sometimes. Nobody doesn't fit it.

"The Courage to Heal" is the bible of the incest-recovery movement. It was published in 1988 and according to its publisher, HarperCollins, has sold more than 500,000 copies. It begat "The Courage to Heal Workbook," which begat the authors' "Allies in Healing," as well as Wendy Maltz and Beverly Holman's "Incest and Sexuality," Beverly Engel's "Right to Innocence" and E. Sue Blume's "Secret Survivors." To read these handbooks is to learn that almost any problem you have may be an indicator of abuse. Ms. Blume offers a 34-item "incest survivors' after-effects checklist" of symptoms, which range from fear of being alone in the dark to multiple personality disorder — with phobias, arthritis, low self-esteem, wearing baggy clothes, the desire to change one's name and sexual difficulties in between. For Ms. Engel, the checklist includes feeling ugly and worthless, having a tendency to apologize inappropriately, feeling like a failure, jeopardizing chances of success, feeling helpless, having problems with sex or in relationships. . . . Why, it's the all-purpose female checklist.

TO want to throw a small wrench into the abuse-survivor machine is like opposing censorship of pornography: nowadays, you feel you have to apologize for any support you might be providing to molesters, rapists, pedophiles and other misogynists. This need for throat-clearing is itself a problem, one that results from the terrible polarization that has emerged on the subject of the sexual abuse of children.

One side, primarily committed to protecting children, emphasizes the appalling prevalence of the abuse of children and the tendency of adults, in every generation, to deny or diminish the reality of this abuse. The other side, primarily committed to protecting adults, is concerned that in the contemporary hysteria too many innocent adults are being unjustly accused. The polarization among professionals is now so bad that researchers are quickly branded as being on one side or the other, and their work discounted by the opposition.

And both sides marshal horror stories as evidence. Read only one case of a child being treated for gonorrhea of the throat — the evidence that helped convict a man in Miami of child molestation — and you will feel a wave of nausea at what adults are capable of inflicting on children. Read only one false-accusation case, and you will feel misery and anger at what bureaucrats are capable of inflicting on parents. To further confuse the issue, the reality of the victimization of children is being obscured by a chorus of adults clamoring that they were victims too — if not as children, then as infants; if not in this life, then in a previous one. The evidence that abuse is more common than we knew is being trivialized by unvalidated claims made by pop-psychology writers that abuse is nearly *universal*, and that if you can't actually remember the abuse, that's all the more evidence that it happened to you.

Women abused as children are indeed more likely than others to be depressed and to have low self-esteem as adults, although there is no good evidence from longitudinal studies showing that such abuse *invariably* causes the entire litany of women's problems. Nor does it follow that all women who are depressed, are sexually conflicted or wear baggy clothes were abused as children. Yet many are being encouraged to rifle their memories for clues that they were.

Thus E. Sue Blume: If you doubt you were abused, minimize the abuse or think "Maybe it's my imagination," these are symptoms of "post-incest syndrome."

And Ellen Bass and Laura Davis: "If you are unable to remember any specific instances . . . but still have a feeling that something abusive happened to you, it probably did. . . . If you think you were abused and your life shows the symptoms, then you were."

And Wendy Maltz and Beverly Holman: "When survivors cannot remember their childhood or have very fuzzy memories, incest must always be considered a possibility."

And Beverly Engel: "If you have any suspicion at all, if you have any memory, no matter how vague, it probably really happened. It is far more likely that you are blocking the memories, *denying* it happened."

And if a woman suspects that she has been abducted by U.F.O.'s, that the F.B.I. is bugging her socks or that a satanic cult forced her to bear a child that was half human and half dog, must she (and we) likewise assume that "it probably really happened"?

The sexual-abuse-victim story crystallizes many of society's anxieties about the vulnerability of children, the changing roles of women and the norms of sexuality. It draws like a magnet those who wish to invoke a measure of sympathy in these unsympathetic times. It is no wonder that publishers and talk shows have a thriving business exploiting stories of abuse for commercial reasons, for these are stories that sell. The childhood abuse explanation of all one's current problems, true or exaggerated, with or without the incest variation, is now *de rigueur* for any aspiring celebrity autobiographer (Patti Davis, Frances Lear, Suzanne Somers, Roseanne Arnold, La Toya Jackson).

As individual works of confession and advice, abuse-survivor books are often reassuring and supportive. They encourage victims of childhood molestation to speak up, to understand that they are not alone and to

find help. The problem is not with the advice they offer to victims, but with their effort to *create* victims — to expand the market that can then be treated with therapy and self-help books. To do this, survival books all hew to a formula based on an uncritical acceptance of certain premises about the nature of memory and trauma. They offer simple answers at a time when research psychologists are posing hard questions.

To raise these questions does not mean that all "reawakened" memories are fraudulent or misguided. It does mean that we should be wary of believing every case of "me too!" that makes the news, and that we should be asking why these stories (and the advice books that play off them) are so popular now. We should also ask where these stories lead, with what consequences for individual well-being and social reform.

The great Swiss psychologist Jean Piaget once reported his earliest memory — nearly being kidnapped at the age of 2. Piaget remembered sitting in his baby carriage, watching his nurse defend him from the kidnapper. He remembered the scratches she had on her face. He remembered a police officer with a short cloak and a white baton who chased the kidnapper away. But none of it happened. When Piaget was 15, his former nurse wrote to his parents to confess that she had made up the entire story. Piaget wrote, "I therefore must have heard, as a child, the account of this story . . . and projected it into the past in the form of a visual memory, which was a memory of a memory, but false."

The harvest of incest-survivor books reflects the popular vision of mind and memory, in which the mind is a camera or tape recorder: all events that happen to us are recorded in memory, although trauma often causes them to be "repressed" until a significant event "unleashes" them and reveals at last what "actually" happened. This is a view of memory inspired partly by psychoanalysis and partly by contemporary metaphors of the mind, which historically have followed major inventions. Thus, during the Industrial Revolution, the brain was likened to a machine; after the invention of the telephone, to a switchboard: after the invention of movies, to a camera; after Univ c, to a computer.

Today many psychotherapists assume that everything significant that happens to us is imprinted somewhere in there, or maybe filed away in a dusty drawer (a metaphor for those of us who came of age before computers). Yet this view is increasingly at odds with that held by most academic psychologists. Researchers who study memory and the brain are discovering the brain's capacity to construct and invent reality from the information it processes. Their studies support what poets and novelists have always known: that memory is not a fixed thing, with its own special place or file drawer in the brain. It is a *process* that is constantly being reinvented. A "memory" consists of fragments of the event, subsequent discussions and reading, other people's recollections and suggestions, and, perhaps most of all, present beliefs about the past.

Thus, in the laboratory, the eminent memory researcher Elizabeth Loftus and her associates at the University of Washington have been able to inject false memories into people's minds by the mechanism of suggestion ("Remember when you were lost in that shopping mall at the age of 5?"). Similarly, the Canadian psychologist Nicholas P. Spanos and his team at Carleton University in Ottawa have created false memories of previous events and even of previous lives (at least in volunteers who believe in reincarnation). These scientists are finding that in the formation of a memory, current beliefs about past events are more important than what actually happened. This is why an event that seemed trivial when we were children can be reinterpreted and given new emotional significance when we are adults — and vice versa.

The mind does not record every detail of an event, but only a few features; we fill in the rest based on what "must have been." For an event to make it into long-term storage, a person has to perceive it, encode it and *rehearse* it — tell about it — or it decays. (This seems to be the major mechanism behind childhood amnesia, the fact that children do not develop long-term memory until roughly the age of 3.) Otherwise, research finds, even emotional experiences we are sure we will never forget — the Kennedy assassination, the Challenger explosion — will fade from memory, and errors will creep into the account that remains.

THIS is not easy news to take. We all get very huffy about the accuracy of our memories, and no wonder; they are the table of contents of our lives. That is why the debate over the vision of memory held by academic researchers and the one held by many therapists and laypersons is so fraught with consequences, legal and psychological. Families are being torn apart by adults who, in therapy, said they remembered their parents abusing them, and now feel the need to confront, to sever relations entirely or to sue for damages. In 1989, the state of Washington passed legislation allowing people to sue their alleged molesters for damages within three years of the time they *remembered* the abuse, and to date at least a dozen other states have enacted similar laws. Is such legislation warranted? How many children who are abused repress the memory — and how many have trouble forgetting?

Two recent books, scholarly yet highly readable, beautifully illuminate these complexities. In "Hidden Memories: Voices and Visions From Within," Robert A. Baker, a retired professor of psychology who taught at the Massachusetts Insitute of Technology, Stanford University and the University of Kentucky, reviews the research on the processes by which perfectly normal individuals can come to believe passionately that they were molested in the crib, abducted by U.F.O.'s or victimized by a satanic cult. And in "Trauma and Recovery," Judith Lewis Herman, a psychiatrist who teaches at the Harvard Medical School, weaves together clinical and empirical evidence in exploring the nuances of trauma in all its varieties.

You would get none of this information or nuance, however, if you picked up any of the popular abuse-survivor books, such as "The Courage to Heal." None of the authors are trained in research, which is not a comment on their ability to write or to do therapy, but which does seem to be one reason for their scientific illiteracy. The authors claim to be "experts" because (a) they were themselves molested, (b) they are social workers who treat incest victims in therapy, or (c) they wrote a book. Writing a book confers further expertise, because the authors then become "nationally recognized" lecturers who conduct workshops and train other psychotherapists. In what can only be called an incestuous arrangement, the authors of these books all rely on one another's work as supporting evidence for their own; they all endorse and recommend one another's books to their readers. If one of them comes up with a concocted statistic — such as "more than half of all women are survivors of childhood sexual trauma" — the numbers are traded like baseball cards, reprinted in every book and eventually enshrined as fact. Thus the cycle of misin-

In these books the rule is: if you feel abused, you were abused.

formation, faulty statistics and unvalidated assertions maintains itself.

Consider this, from "Secret Survivors":

"Incest is easily the greatest single underlying reason why women seek therapy or other treatment. At any given time *more than three-quarters of my clients* are women who were molested in childhood by someone they knew. Yet ... many, if not most, incest survivors *do not know* that the abuse has even occurred! ...

"It is my experience that fewer than half of the women who experienced this trauma later remember or identify it as abuse. Therefore it is not unlikely that *more than half of all women* are survivors of childhood sexual trauma."

IN spite of Ms. Blume's emphases and exclamation marks, not one of these assertions is supported by empirical evidence, and her own experience of her own clients does not constitute such evidence. Ms. Blume seems utterly unaware, for example, of the selection process that might bring incest survivors to her office.

To reach their inflated statistics, the survivor books rely on definitions that are as expandable as a hot-air balloon. In these books, the rule is: If you feel abused, you were abused. According to the authors of "The Courage to Heal," "Violation is determined by your experience as a child — your body, your feelings, your spirit. ... Some abuse is not even physical." It doesn't matter if no sexual contact occurred; anything your parents did that you didn't like is a violation. Beverly Engel didn't like the way her mother would plant a "wet" kiss on her, look at her in ways that made her feel "queasy" and walk in on her in the bathroom. "It was not until very recently," she writes, "that I came to terms with my mother's behavior and saw it for what it really was — sexual abuse." This is a textbook example of the reconstructive nature of memory, showing how an adult belief can transform childhood experiences into "memories" of trauma.

What is wrong with a therapist's belief in the "epidemic" prevalence of incest? Aren't we just quibbling about numbers, when the problem itself is real? Not to researchers such as Nicholas Spanos, who are worrying about the rise in what they call "pseudomemories" that are induced by some therapists and hypnotists — not only of incest, but also of past lives, multiple personalities and participation in satanic cults.

Mr. Spanos, who has conducted dozens of studies, has concluded that "suggestion-induced reports of perceptual and memory change" offered by hypnotized individuals should not be treated as actual descriptions of events. The "central component" in studies of hypnosis, he finds, is the willingness of hypnotized individuals "to bias their responses" as they believe the context demands.

Of course, all clients in therapy are influenced by the therapist's theoretical framework. This is why people in psychoanalysis have Freudian dreams, people in Jungian therapy have archetypal dreams, people in primal scream therapy remember being born and people in past-lives therapy remember being Julius Caesar (or whoever). Yet there is a sensitive line between any therapist's normal probing for evidence of certain psychological problems and literally creating them by the force of suggestion. Wendy Maltz and Beverly Holman, therapists in Eugene, Ore., make the process explicit in "Incest and Sexuality": "It may take considerable digging on the part of the therapist," they say, "to discover incest as the source of the symptoms being experienced by the client." When does "considerable digging" become undue persuasion? On this subtle matter, the books are silent.

One other simplistic theme promulgated by the abuse-survivor books affects the survivors themselves and the solutions we seek, as a society, to the problem of childhood abuse. Uniformly, these books persuade their readers to focus exclusively on past abuse as the reason for their present unhappiness. Forget fighting with Harold and the kids, having a bad job or no job, worrying about money. Healing is *defined* as your realization that you were a victim of sexual abuse and that it explains everything wrong in your life.

Beverly Engel even offers a list of stages in which the victim proceeds from darkness into light. In the first stage, she, like "many victims of childhood sexual abuse," has no conscious memory of having been abused, so she denies her symptoms. In the next stage, visiting a therapist or reading one of these books, she begins to suspect she was abused. In the third stage, she still doesn't know that she is a victim because she doesn't realize that what happened to her was abuse. In the fourth stage, she knows she was sexually abused but fails to connect her "symptoms" with the abuse. In the last stage of healing, she knows she was abused and connects the dots to her present unhappiness.

You can see this process at work in Betsy Petersen's "Dancing With Daddy: A Childhood Lost and a Life Regained" (1991). According to Ms. Petersen, the incest (which she never actually remembers) explained her nightmares, eating disorders, compulsive cleanliness, shame about sexuality, anxieties, drive for self-improvement, colon problems, back pain, insecurity about money, difficulties in wishing for something for herself, impatience with the obnoxious behavior of her sons, and even why she cooked a hot breakfast for her dogs every morning. It explained, as if no other woman had this problem, her vulnerability to fad diets. It explained, as if no other new parent had this problem, her awkwardness with her firstborn son. It explained, as if no other modern adult had this problem, her malaise of alienation and loneliness.

For Ms. Petersen, all current events are processed through the lens of incest. "Before I knew my father had molested me," she says, "the feelings cycled endlessly and attached themselves to the world outside my skin: If only my children weren't so demanding, I would think, I wouldn't feel so crazy." Exactly! One day her son, whining to be taken out for fast food, screamed and cursed her, and threw his shoe. She writes: "And suddenly I was *so mad*. My stomach hurt." Was she angry about this behavior? Oh, no; she was angry *at her father*.

Betsy Petersen seems to have completely shut out "the world outside my skin," and ultimately that is the problem and the appeal of the survivor narrative. It places responsibility for the common problems in women's lives on a single clear villain, someone safely in the woman's past. The victim doesn't have to do anything except understand the origins of her problems. Her partner doesn't have to change, as long as he is sympathetic to her early trauma. And she gets a love bath from her friends and supporters. Who could resist? In this respect, the sexual-survivor narrative, like other popular theories based on female psyche and biology, locates the origins of women's victimization, powerlessness and unhappiness inside the woman. It's in her; it's up to her to fix herself.

In 1978, Louise Armstrong wrote one of the first incest-survivor books, "Kiss Daddy Goodnight." To Ms. Armstrong and other feminist writers, incest and other forms of child abuse were not the aberrations of a few sick men, but the results of a system that endows men with the sense of entitlement to own and abuse women and children. Today the survivor movement has shifted from an emphasis on social change to one on psychological solace. Reflecting in a revised edition of her book on how public conversation about incest changed in the decade since its publication, Ms. Armstrong mused: "Where is everybody? I sometimes ask, meaning the survivors. The voices of no-nonsense, unsentimental, unromantic reason. Oh (the answer comes back), they're in therapy. Nothing wrong with that. We all need help and support." But, she continued, "exclusively personal solutions do nothing to defy the ongoing tacit permission for abuse."

Contemporary incest-survivor books encourage women to incorporate the language of victimhood and survival into the sole organizing narrative of their identity. It becomes their major story, and its moral rarely goes farther than "Join a group and talk about your feelings." Such stories soothe women temporarily while allowing everyone else to go free. That is why these stories are so popular. If the victim can fix herself, nothing has to change. □

Carol Tavris, a social psychologist, is the author of "The Mismeasure of Woman."

Missoulian
February 21, 1993

EXHIBIT 2
DATE 3-16-93
SB 223

FACT or fiction

After years of supressing traumatic memories, can the mind suddenly retrieve them?

By MEA ANDREWS
of the Missoulian

Who can miss the headlines? Roseanne Barr Arnold accuses her parents of sexual molestation and is featured on the cover of People magazine. A former Miss America from Colorado goes public, telling her story of abuse to the entire country. An adult woman, playing with her children, has flashbacks of her father murdering a family friend more than 20 years earlier.

Talk shows are filled with guests, famous and unknown, who remember haunting, terrible indignities from their pasts. The majority recount tales of horror never forgotten.

But some remember incidents from childhood after years of therapy. Details surface from the darkest recesses of the brain, where they were buried — repressed — for decades.

Is this possible?

The extent to which memory can be totally repressed is one of the new debates inside the professional circles of counseling, forensics and victim assistance. The possibility that some memories are fabricated, either by the story-teller or by therapy gone awry, has been dubbed "false memory syndrome" and is cropping up in professional literature as well as the lay press.

A national foundation set up to question some of these stories will be a year old next month and already has more than 1,500 members.

Missoula psychiatrist John J. Cannell is intrigued.

Based on professional experience and emerging information about memory and the mind, he is skeptical that every single story of repressed memory is true.

"I have patients who have been abused," says the doctor. "They've suffered terrible things. Horrible things."

"But," he says, "they've never forgotten it. In fact — like post-traumatic stress syndrome that we see in veterans of the Vietnam War — they re-live the events, over and over. They can't escape them."

Cannell, who has collected stacks of articles and papers on false memory, is particularly skeptical of vivid, detailed memories from the earliest years of life. There's no medical evidence that authentic memory from infancy is possible, he said, because the part of the brain capable of such retention isn't functioning until age 4 or 5.

And memory from later years is suspect, too. Anyone who works with crime witnesses knows how inexact a human's recollections can be.

"Memory is not a video machine," he said. "The more you think about something, the more you remember it. And yet, it may bear no resemblance to the truth."

Missoula psychologist Paul Moomaw, past president of Montana's association of mental-health professionals, also is intrigued. But he's skeptical about false memory syndrome.

"There's no doubt from the research that it is possible to create a false memory," Moomaw said. "Given the right circumstances, you can get a false confession from people (accused of crimes). And the therapy office does create the right kind of situation because it is sheltered, buffered from other input."

But the amplified debate about false memory syndrome is "a tempest in a teapot," he said.

"We don't want to return to where we were 20 or 30 years ago," when nobody believed victims; perpetrators were not even questioned; and therapists discounted stories of abuse as sexual fantasies, not reality.

"I've worked with enough sexual offenders to know how good they can be, how very convincing they can be. They often ... go on the attack, blaming the system and members of their family."

"Some of them are just creeps," he said. "They are skilled at portraying themselves as the victims."

Many clients enter therapy because "there's a sense that something bad happened years ago," said Jim Parker, regional director for outpatient services at the Western Montana Regional Mental Health Center in Missoula.

"It is not uncommon, in certain circumstances, to have memories that are broken off, forgotten, repressed to a point where the person doesn't remember them." In therapy, many of the memories come back.

The concept of false memories is more than an academic discussion for some families. Tom and Gwen Peterson — whose names have been changed for this article — raised four children in a rural Montana community. One son is now accusing them of sexual and emotional abuse; the other siblings discount his story, they say.

"Most kids can think of things that a parent did to them when they were young that hurt," Gwen told the Missoulian. "They remember that parents favored one sibling or that someone picked on them.

"But the things he accused us of are just untrue, terrible, awful. I wouldn't want to have anything to do with someone who did those things."

The Petersons have joined the Philadelphia-based False Memory Syndrome Foundation. So have a handful of other Montana families who also believe they've been falsely accused. The foundation has more than 1,500 members from all 50 states.

These accusations — which sometimes arrive in a letter alleging the abuse, sent by a daughter or son at the urging of a therapist — have devastating effects on families.

"You can't talk to people about it," said another Montana woman who believes one of her daughters has created false memories of abuse.

"We drift on. We stay silent because too many people judge you guilty. We feel like we're in some kind of a witch hunt. No court of law would convict someone of any other crime on the unproven testimony of one single person."

Are a few bad professionals taking the list of symptoms of abuse and coaching clients to believe that they were abused as children?

Cannell and some other professionals believe it can, and does, happen. People who experience relationship problems, sleeplessness, eating disorders and other symptoms may be convinced there's repressed sexual abuse in their past; clients who deny it are told they are "in denial."

"There seems to be a personality type that is more susceptible," Cannell said. "Some people are hypnotizable; they have very suggestible personality types. They tend to be cultists, impulsive, and tend not to be very skeptical."

"Good therapists go with the client. We don't plant ideas," said Moomaw. "We don't convince clients of anything. To grab at a set of symptoms and jump to conclusions about a person's experience is just wrong."

There are questionable practitioners in almost any line of work, said Nadine Wisniewski, a faculty member in the University of Montana's psychology department. Well-trained therapists do not tell a client what's wrong; they help the client discover for themselves.

Wisniewski has followed the false-memory discussion and talks about it with students in some classes.

She, too, is very skeptical and wary.

"I haven't read anything yet that shows me solid evidence of this syndrome," she said. "I want to see the research. It does make me that much more careful about the work I do; it should make us more careful about the words we choose as therapists."

"It takes an incredible amount of courage to talk about some of these memories," she said. "I've worked with enough survivors to know that they are working very hard NOT to believe it."

"This must be extremely rare," Parker said. "We see about 1,000 clients a year (at the Mental Health Center). But we've never seen anybody who reported or developed false memory syndrome."

"Who would want to make up something like this?," asks Barbara Lokitz, a Ph.D. counselor who works with adult victims of abuse and incest at Women's Place in Missoula. "My experience is that most people resist facing these memories. They don't want to remember them."

Lokitz wonders whether the false-memory discussion is a backlash of some sort. Adult victims of incest and abuse are mostly women; the accused are mostly men. Suddenly, these adults are speaking out; they gain power from the stories of others.

Society's shifts of power often create tensions, disbeliefs, accusations, backlashes.

"Memory only lets go with what it can handle at a particular time," says Lokitz, who sees many victims struggling with deep and ugly pain from their pasts.

"What does it say about the world we live in that child sexual abuse defines the life experience of so many women? I'm afraid that so much energy is being placed on the possibility of a small percentage of the population (that may manufacture memories). It's lopsided. Let's look at the widespread incidence of child sexual abuse."

Memories — real and made up — have important legal consequences. New laws allow victims to file child-abuse and incest lawsuits years after the abuse allegedly happened. And now, lawsuits are emerging elsewhere in the country, filed by clients who allege their therapists planted false memories.

But the people who own these memories provide the best reasons for continuing research, Cannell argues.

"People want an explanation for their misery," he said. "But there is no healing if someone relies on something that is false to explain their problems. The pain is still there. People won't get well unless you search for the real causes of their pain.

"Life is hard enough. Why make it harder?"

FOR MORE INFORMATION:

- THE FALSE MEMORY SYNDROME FOUNDATION HAS A TOLL-FREE NUMBER, 1-800-568-8882. OR, WRITE: FMS FOUNDATION, 3508 MARKET ST., SUITE 128, PHILADEPHIA, PA 19104.
- DR. JOHN J. CANNELL IS SCHEDULED TO GIVE A FREE PUBLIC LECTURE ABOUT FALSE MEMORY SYNDROME ON MARCH 11, FROM NOON TO 1 P.M., AT THE UNIVERSITY OF MONTANA'S CHEMISTRY-PHARMACY BUILDING, ROOM 109. IT IS PART OF A CLINICAL-MEDICINE LECTURE SERIES.

Psychiatry's Challenge: Defining an Appropriate Therapeutic Role When Child Abuse Is Suspected

EXHIBIT 13
DATE 3-16-93
SB 23

By Harold I. Lief, M.D.

Imagine that you are consulted by parents whose adult daughter has just accused her father of incestuous relations a decade or more after the alleged sexual abuse occurred. Who to believe—the parents or the adult child?

On the one hand, sex abuse is a frequent and frightful experience with potentially disastrous consequences for adult adaptation. On the other hand, a false allegation of incest will rip apart a family, inflicting a blow from which few families can fully recover. What a dilemma for the psychiatrist!

What if you believe that the therapist treating the adult "victim" has unduly influenced the patient by a style of interviewing in which suggestion, perhaps even hypnosis, has been used to elicit memories of abuse? How reliable are such memories?

Among the problems generated by the proliferation of new "therapists" in America is the question of how to address the often solicited and mistakenly elicited revelation of child sexual abuse with the concomitant destruction of the nuclear family and, at the same time, avoid undermining the enormous need for psychiatrists and other mental health professionals to recognize legitimate symptoms and maladaptive behavioral consequences of child sexual abuse.

There has been a recent increase in the number of "therapists" who encourage people to "remember" events that apparently never happened and to accuse parents falsely, often decades after the alleged events took place. These therapists, who seem to invent new names constantly and who now call themselves "traumatists," are guided by the book titled *The Courage to Heal*. This book states on page 21, "If you are unable to remember any specific instances (of childhood sexual abuse) but still have a feeling that something happened to you, it probably did." In seeking to expose such abuses, misguided therapists in many cases help invent them.

The dilemma for psychiatrists, of course, is that we are just at the dawn of realizing the enormous effect that physical and sexual abuse has on children. These effects need to be dealt with. When abuse of any kind is discovered, the personality and character distortions of the patient have to be worked through in psychotherapy, so that he or she can grow. Fixing it in reality is hardly the solution; neither is denial of it with subsequent self-blame once it is revealed.

The real process is one of growth through good psychotherapy. The slow but gradual recovery from that abuse in a bona fide treatment is a long-recognized, well-established form of therapeutic work. Debatable, however, is whether the incest itself should be at the core of treatment for every incest victim.

Stories about mistaken "victims" are frightening. A quote from a letter received by the author gives you some idea of how this works.

"Cases described fit to the dot what happened to my daughter. . . .She was brainwashed for three years by a Boston social worker, who calls herself a traumatist, and her accomplices. Finally my daughter caved in about July 1989, refuses to talk to me, and comes up with allegations and lies. As a result we ended up in messy divorce proceedings, which ate up already a substantial part of our life savings. The family is completely split up. I understand that the social worker still continues accepting the fees from my daughter."

Another excellent example describes a fairly typical sequences of events: "A man. . .whose 25-year-old daughter went to a codependency group. . .[the father who called me had been an alcoholic 10 years ago] and one of the members of the group took her to a feminist group meeting. . . .In this group meeting, they all underwent group hypnosis after the therapist had said, 'Let's all get hypnotized and see how many of us were sexually abused.' The young woman came out of this experience feeling that she was sexually abused, sought out a 'sex abuse therapist' who 'confirmed' that she had been sexually abused between the ages of 3 and 4."

These are only two of a large and growing number of examples that force us to reexamine the cavalier way in which we may be aiding and abetting the discovery of childhood sexual abuse.

Notwithstanding the charlatans, there is a great deal of child abuse and sexual abuse going on. Legitimate studies by the National Institute of Mental Health and the Centers for Disease Control, for example, show that the percentage of women and men who have been physically or sexually abused as children is very high—in some studies, 25 percent or more claim to be victims. It's impossible to turn one's back on that. It is important that we, as psychiatrists, not abet patients in turning the blame on themselves, but instead help them achieve a full recognition of the terrible consequences of the abuse, while at the same time help them accept the responsibilities of adult life—a task that requires considerable psychotherapeutic skill.

The careful dissection that well-trained psychiatric therapists use to discover the total background of the patient is no longer viable, because there are financial rewards for making the connection between sex abuse and adult psychopathology—perhaps three or four years of treatment.

Can we afford this kind of reckless damage to families? Can we afford to allow ignorant, untrained, or partially trained people to masquerade as therapists abusing a significant medical treatment, namely psychotherapy? Our identity is being damaged rapidly through this and other new therapeutic fantasies or fads that attract hundreds of undiscriminating therapists.

The issue of real versus false allegations of child sexual abuse, which haunted Freud, still haunts us today but for different reasons. We need to research the frequency of false accusations, the motives for making them, the role of the therapists in generating them, and the relationship between repressed memories and the process by which they are recalled.

Paul Fink, M.D., collaborated in writing this article. Dr. Lief is professor emeritus of psychiatry at the University of Pennsylvania School of Medicine and psychiatrist emeritus at the Pennsylvania Hospital. Dr. Fink, a former APA president, is chair of the department of psychiatry at Albert Einstein Medical Center and medical director at the Belmont Center for Comprehensive Treatment in Philadelphia.

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EXHIBIT 4
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Modern Witch Hunt—Child Abuse Charges

By RICHARD A. GARDNER

Janet Reno, Bill Clinton's nominee for attorney general, has made her name largely in cases involving the defense of children. She may well continue this focus if she is confirmed in her new job. For all those in the new administration, though, a task awaits. It is the modification of the Child Abuse Prevention and Treatment Act.

The 1974 act—sometimes known as the Mondale Act, after one of its sponsors—was implemented to fight a genuine problem. Up to that year, child abuse was rarely reported and frequently covered up. It was Congress's intent to rectify this deplorable situation by providing incentives for states to set up programs for child abuse research, identification, prosecution and treatment. Federal funding was made available to match state spending, and this served as an incentive for states to create such programs.

The law, however, has had results that its authors did not intend. In America today, child sex-abuse accusations are burgeoning. In many cases, it is probable that the charges are valid. But when the charges arise from vicious child custody disputes, where the vengeance element and the opportunity for exclusion of a hated spouse is operative, or in venues such as day-care centers, where the potential pedophile has little opportunity for contact with the child alone, the prevalence of child abuse is in reality quite low.

The Child Abuse Establishment

Nevertheless, the number of charges in these areas escalate. The primary reason: The Mondale Act has strengthened the "child abuse establishment"—a network of social workers, psychiatrists, psychologists and law enforcement officials—that through its very existence frequently validates an individual's charges. In other words, this establishment, unintentionally or intentionally, encourages charges of child abuse whether they are reasonable or not.

Some examples from cases in which I have personally evaluated the accused as well as other parties:

On March 5, Raymond and Shirley Souza (both 61) of Lowell, Mass., will be sent to prison, possibly for the rest of their lives. They are accused of having performed a series of perverted sexual acts on three of their grandchildren. The accusations began when one of the Souzas' daughters had a *dream* in which she envisioned her parents and her brother sexually abusing her when she was a child. In the dream her mother had a penis. She concluded that the dream indicated that she had actually been sexually abused as a child by her parents and that the Souza grandchildren had probably been abused as well. She suggested that her siblings question the grandchildren. Thus began the wave of hysteria that ultimately resulted in the Souzas being found guilty of these alleged crimes. (Dorothy Rabinowitz writes about this on the Leisure & Arts page of this paper today.)

On the basis of my examinations of the Souzas, I was convinced that there wasn't a scintilla of evidence that they committed these crimes or even exhibited pedophilic tendencies. Furthermore, I carefully reviewed many of the documents in this case, especially videotapes of the interviews with the grandchildren conducted by the prosecutor's overzealous examiners. I found the interviews to be coercive, with the use of many leading questions and the selective ignoring of comments by the children that would have led any unbiased examiner to question whether these allegations had any merit whatsoever.

The child abuse establishment—social workers, pyschologists, law enforcement officials—encourages charges of child abuse whether they are reasonable or not.

Another example: Kelly Michaels, a New Jersey nursery school teacher, was sentenced to 47 years for allegedly sexually abusing 20 children under her care. After examining the alleged victims, the accusing parents, and Ms. Michaels, I was convinced that she did not engage in the variety of abominable acts attributed to her. Yet the parents' hysteria was fueled by overzealous "validators" and law enforcement officials, leading to Ms. Michaels's conviction.

Part of the problem is that since 1974, the Mondale Act has been expanded several times, progressively increasing the federal funds allocated to the states. Certain provisions of the original law and its successors worked to encourage people to bring child abuse charges that were frivolous, and sometimes malicious, fabrications.

To qualify for federal money, states had to pass legislation that provided immunity from prosecution for all those reporting child abuse. With the advantage of the screen of immunity, many people in legitimate cases gained the confidence to come forward. However, the same immunity protected people making frivolous and even fabricated accusations.

To get federal funds, states were also required to pass laws requiring specific people (such as health-care professionals, law-enforcement officials, teachers and school administrators) to report suspected child abuse to the appropriate child protection agency. Such mandated reporting, of necessity, had to be backed up by penalties (usually fines and/or prison sentences) for failure to report. In effect, this provision has made it a criminal offense for such people not to report suspected abuse. As a result, these professionals are put on the defensive—if they don't report, they might be deemed criminals. The result has been overreporting of even the most absurd and impossible accusations.

During the few years following the Mondale Act's passage, all 50 states and the District of Columbia passed legislation providing for the establishment and funding of the appropriate programs.

The basic problem is that the system is biased. State and federal money is available for the treatment of children who are found to have been abused, but no funds have been specifically allocated for the protection and treatment of those who have been falsely accused. Nor has money been available for another special and growing group—children who have suffered psychiatric disturbances because they have been used as vehicles for the promulgation of a false accusation. Evaluators who conclude there has been abuse set in motion events that bring their offices both state and federal funds. If they conclude there was no abuse, their facilities receive no funding for further evaluation of treatment.

The "child abuse establishment" also furthers itself. Mental health facilities, child protection services, and investigatory agencies (including police, detectives and prosecutors) all depend on each other. It behooves them to work together, because the greater the number of referrals, the greater the justification for the requisite funding. The current system generates an endless stream of referrals for investigators and "validators." All this predictably fuels sex-abuse hysteria, hysteria in which an accused individual's constitutional due-process protections are commonly ignored.

Here are some changes at the federal level that could help:

- Drop the federal immunity clause. Immunity from prosecution is generally available only to specific groups essential to the functioning of the legal system—e.g., judges and prosecutors. It is incompatible with the basic philosophy of our legal system. Such immunity encourages frivolous and fabricated accusations. I would go further and recommend that states that include the immunity provision should not be entitled to federal funding.
- Drop the clause mandating the reporting of child abuse. In practice, it has resulted in the reporting of the most frivolous and absurd accusations by two- and three-year-olds, vengeful former spouses, hysterical mothers of nursery school children, and severely disturbed women against their elderly fathers. Highly skilled examiners, professionals who are extremely knowledgeable about sex abuse, examiners who know quite well that the accusation is false, are required by law to report the abuse to individuals who they often know to be overzealous, inexperienced and even incompetent. Yet they face criminal charges if they do not report these accusations.
- End federal funding to states in which suspected individuals are deprived of due-process protections. Prosecutors typically use their own experts to evaluate the children but are allowed to prevent defense experts from evaluating them. The accused, then, is deprived of a fair trial, a right guaranteed to him by the U.S. Constitution.
- Provide funding for programs to assist those who are falsely accused, as well as children who have been victimized by being used as vehicles for a false accusation. Such programs could be combined with existing child abuse and child neglect programs.
- Require investigatory agencies at all levels to routinely notify and invite for voluntary interviews every individual accused of child abuse or neglect. (These suspects, of course, must first be informed of their legal rights.) The failure to routinely extend such invitations should deprive the agency of funding.
- Require legal representation for children who may be victims of embroilment in false accusations.

The New Hysteria

These recommendations sound strong. But from my perspective, the U.S. appears to be witnessing its third great wave of hysteria. The first, the Salem Witch Trials, in 1692, lasted only a few months. Nineteen people were hanged before it became apparent that the accusations were suspect. In the 1950s, at the time of the McCarthy hearings, hysteria over the communist threat resulted in the destruction of many careers. Our current hysteria, which began in the early 1980s, is by far the worst with regard to the number of lives that have been destroyed and families that have disintegrated. There is no question that most efforts at rectification will prove futile unless the Mondale Act modifications described here are implemented.

Dr. Gardner, a clinical professor of child psychiatry at Columbia University, is an expert on the sexual abuse of children.

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Defending parents from ugly charges

Philadelphia Inquirer SUNDAY September 20, 1992

By LUCIA HERNDON

Defending parents from ugly charges

A group of young people met recently in a pleasant family room in a suburban house. How ironic, I thought. Meeting in a family room to hear tales of families torn apart.

The group was made up of people whose siblings have accused their parents of incest — a crime that the parents hotly deny. The group members had gathered to find ways to support one another and their parents in the face of these ugly accusations.

Their stories were disturbingly similar — and nearly always involved women. A sister undergoes therapy for depression or some other emotional disorder. She announces that she remembers instances of childhood incest. She then wants her parents to confess to the abuse and she wants other family members to admit that they were aware of the situation. If that doesn't happen, she may very well cut off contact with her entire family.

Devastating to parents, yes. But equally devastating to those siblings who question the allegations.

They are the peers, the ones left to sort through the situation from ground level. Initially, the stories sound authentic because they are recounted with such sincerity. But one woman said that when she questioned her sister, she discovered that the sister's accusations failed to hang together. The sister told of being abused as a 2-year-old, but gave the location of the abuse as a house the family moved to years later.

A high school student said her older sister's revelation initially made her fearful of her father.

"I couldn't believe it was true," she said. "But my sister seemed so sure it happened. After she told me, I didn't want to see my father. It took me a while to realize that it wasn't true.

LUCIA HERNDON from L1

My sister nearly wrecked my relationship with my parents."

Others told of their sisters' trying to convince them that they, too, had been incest victims but were in a stage of deep denial.

"For a while you ask yourself, 'Did this happen to me and I forgot it?' " said one woman. "But I realize now that my sister basically has written a play and has assigned us roles. I'm supposed to be the repressed victim. My parents are the bad guys."

The question these family members ask is not whether the incest occurred — they, finally, do not believe that it did. But they do wonder how these "memories" suddenly materialized. Some think the answer lies in over-eager therapists who plant the notion of abuse that an emotionally unstable patient then believes actually happened.

"We're not denying that incest and sexual abuse does occur," said Pamela Freyd, executive director of the False Memory Syndrome Foundation, a Philadelphia-based organization of parents whose children have accused them of sexual abuse.

"But we question charges that surface in a particular situation; one where adults have spent their entire lives with no memory of these incidents. When they get into therapy, these memories suddenly appear. We ask the therapists to use extreme caution, especially if they are using hypnosis to tap these so-called memories, and [we ask that] every attempt be made to verify the charges."

Patricia Dice, a family therapist who attended the recent meeting, said she has dealt with many cases of childhood sexual abuse. But in those cases, the victims never forget the episodes. The memory does not fade away, only to return decades later.

Since its inception in March, the False Memory Syndrome Foundation has been contacted by 1,200 family members across the country who have been accused of incest. Its mission is to help every member of the family.

"Parents are understandably upset," said Freyd. "But the siblings also suffer."

One result frequently is alienation, and not only of the accuser. Family members have missed graduations, weddings and other gatherings because of the rift caused by the accusation — especially if the siblings are divided about which people they believe. One woman said that her sister accused their father not only of years of incest but also of the ritualistic killing of the family dog in the bathroom.

"It is very clear to me that none of these things happened," said the woman. "But what is true is that my sister believes it happened and has pulled away from the family because none of us believes it. I was close to my sister, but now I rarely see her."

Freyd said that incidents such as this are why her organization is "hard at work to put some restraints on this. The memories tend to get more and more bizarre. They move on from sexual abuse into satanic rituals.... It's not that bizarre things don't happen, but the pattern of these memories ought to make therapists stop and say, 'Wait a minute.' "

Efforts to reason often fail. "I tried to talk to my daughter about her accusations" of father-daughter incest, said one woman. The daughter's therapist nixed the conversation. The mother continued: "I asked her to let me talk to her therapist, but she refused to give me the name. There is no way we can get to the bottom of this."

One sibling blamed unscrupulous therapists for nurturing this type of accusation.

"They pick on upper-middle-class women," she said. "Those are the women who have the money for therapy. You won't find poor people making these kinds of charges. And you won't find therapists going to the ghetto to look for patients. There's no money there."

"Research has shown how easy it is to influence memory," Freyd said. "I think that most of the therapists involved are sincere, caring people who are concerned about their patients. But there is a tragic lack of understanding about the nature of memory."

There was a lot of heartache expressed at this meeting. Yet these participants seemed to feel the need to try to maintain a relationship with their sisters. It was hard for me to believe that they could continue the effort, especially when they often were rebuffed.

"They can maintain a lifeline to their sister," Patricia Dice said. "They can keep the lines of communication open. A place should remain for that missing family member should they want to return. Often a sibling can ensure that that space is available."

"Even though it's upsetting for me, I try to keep in touch with her," said one woman. "I would like my sister back."

For More Information

■ Contact the False Memory Syndrome Foundation at 1-800-568-8882.

See LUCIA HERNDON 15

EXHIBIT #16
DATE 3-16-93
SB 368

Lake County Courthouse (406) 883-6211

LAKE COUNTY

106 4th Ave. E. Polson, Montana 59860

TESTIMONY BY LAKE COUNTY COMMISSIONER MIKE HUTCHIN BEFORE THE HOUSE JUDICIARY COMMITTEE, MARCH 16, 1993 ON S.B. 368

MEMBERS OF THE COMMITTEE,

FOR THE RECORD MY NAME IS MIKE HUTCHIN, CHAIRMAN OF THE LAKE COUNTY BOARD OF COMMISSIONERS. UNFORTUNATELY, WE RETURN TO HELENA AGAIN TO OPPOSE THIS LEGISLATION. WE WOULD FIRST LIKE TO ASK YOU TO THINK ABOUT THIS. IMAGINE YOURSELF BEING A LEGISLATOR LIVING IN LAKE COUNTY KNOWING YOUR AREA AND ITS CONSTITUENCY AND IT'S OWN PROBLEMS. WOULD YOU FIND IT REASONABLE OR ETHICAL THAT A LEGISLATOR FROM CASCADE COUNTY SOME 200 MILES AWAY SPONSORS THIS LEGISLATION NOT KNOWING THE AREA AND ITS SPECIAL ISSUES. LAKE COUNTY DOES NOT FIND THAT REASONABLE OR ETHICAL. WE HAVE REP. MERCER, REP. DAVIS, REP. BRANDEWIE AND SENATORS HARDING AND WELDON, WHO ALL DO WELL REPRESENTING THE ISSUES OF OUR COUNTY. IF THEY FELT THIS WAS REASONABLE LEGISLATION, THEY WOULD DEFINITELY SPONSOR IT.

TWO YEARS AGO THIS ISSUE WAS IN THE LEGISLATURE AS A FULL RETROCESSION ISSUE. IT WAS DEFEATED AND THE SPONSOR OF THIS LEGISLATION WAS LOUD AND CLEAR IN SAYING IN THE NEXT TWO YEARS YOU GUYS GO HOME AND WORK THIS OUT.

AT THE END OF THE 1991 SESSION, WE RETURNED HOME AND ON MAY 13, 1991 MET WITH CHAIRMAN PABLO AND SEVERAL MEMBERS OF THE TRIBAL COUNCIL ALONG WITH THEIR LEGAL COUNSEL, LAKE COUNTY ATTORNEY AND LAKE COUNTY SHERIFF. WE PUT ON THE TABLE 14 IDEAS FOR DISCUSSION TOWARD A LOCAL AGREEMENT ALONG WITH ASKING FOR ANY OTHERS THE TRIBE WOULD PROPOSE. WE ENJOYED A CORDIAL MEETING WITH MEANINGFUL DIALOGUE AND LEFT WITH THE UNDERSTANDING THEY WOULD GET BACK TO US. THEY DID NOT. ON JULY 8, WE SENT A REMINDER LETTER, NO RESPONSE WAS RECEIVED. AGAIN, ON AUGUST 8 WE ASKED TO DISCUSS THE IDEA OF A COOPERATIVE AGREEMENT. NOT UNTIL OCT. 15, FIVE MONTHS LATER, DID WE RECEIVE A LETTER FROM THE TRIBE WHICH WAS RATHER SCATHING AND CONFRONTATIONAL.

WE AGAIN RESPONDED WITHIN SIX DAYS, (NOT WITHIN FIVE MONTHS) AND ASKED TO MEET AT THEIR CONVENIENCE AND GET ON WITH THE DISCUSSIONS. WE AGAIN HEARD NOTHING FROM THE TRIBE. LAKE COUNTY ATTORNEY NISTLER IN CONJUNCTION WITH THE COMMISSIONERS BROUGHT SOME ISSUES TO THEN ATTORNEY GENERAL MARC RACICOT'S ATTENTION IN A LETTER AND ASKED FOR HIS ASSISTANCE IN ARRANGING FURTHER DIALOGUE WITH THE TRIBES. HE MOST GRACIOUSLY ORCHESTRATED A MEETING WITH ALL INTERESTED PARTIES WHICH WAS HELD APRIL 13, 1992

IN HELENA. ONCE AGAIN, A CORDIAL MEETING WAS HELD WITH MEANINGFUL DIALOGUE. AT THE CONCLUSION OF THE MEETING, THE TRIBE INDICATED THAT THEY WOULD BE IN TOUCH WITH ATTORNEY GENERAL RACICOT ON THE ISSUE.

TO OUR KNOWLEDGE, ATTORNEY GENERAL RACICOT NEVER RECEIVED THAT SUBSEQUENT CONTACT AND NO CORRESPONDENCE HAS OCCURRED SINCE APRIL 13 ON THE MATTER OF A COOPERATIVE AGREEMENT.

THE SEQUENCE OF EVENTS JUST DESCRIBED ARE DOCUMENTED IN THIS PACKET OF INFORMATION. WE DID OUR PART IN TRYING TO GET WITH THE TRIBE AND THEY SIMPLY REFUSED TO COME TO THE TABLE.

UNDER P.L. 280 WE HAVE THE BEST OF ALL WORLDS AND COULD DEVELOP A COOPERATIVE AGREEMENT THAT WILL WORK.

THE COMPLEXITY OF THIS ISSUE IS REVEALED IN THE BINDER OF INFORMATION YOU RECEIVED FROM FORMER SENATOR DICK PINSONEAULT WHICH IS ONLY THE TIP OF THE ICEBERG, ON THE QUESTIONS INVOLVED WITH ANY PART OF RETROCESSION. AT A RECENT PUBLIC MEETING THAT WE HELD IN THE COMMISSIONERS OFFICE ATTENDED BY TRIBAL MEMBER'S AND NON-MEMBERS, ONE OVERWHELMING CONCERN WAS THE LACK OF UNDERSTANDING OF HOW THE DETAILS WILL WORK. THOSE DETAILS CAN'T EVEN BE ANSWERED BY THE ATTORNEYS. WE IN LAKE COUNTY LIVE IN A VERY INTEGRATED SOCIETY WHICH BY ITSELF MAKES THE ISSUE VERY DIFFICULT BECAUSE IT IS RARE THAT FAMILIES DO NOT HAVE RACIAL INTERTIES THROUGH MARRIAGE, BUSINESSES, SOCIAL CLUBS, ETC.

WE DO BELIEVE THE PAST TWO YEARS HAVE AFFORDED US A COOLING OFF PERIOD AND A PROGRESSION TOWARD MORE TRUST AND UNDERSTANDING IN OTHER AREAS THAT WILL ALLOW US TO COME TOGETHER AND STRIKE UP AN AGREEMENT THAT WILL HAVE AN EVOLUTION INTO AN EXCELLENT WORKING LAW ENFORCEMENT IN LAKE COUNTY AND THE FLATHEAD RESERVATION.

WE ASK YOU TO OPPOSE THIS BILL AND SEND US HOME TO SIT AT THE TABLE AND NEGOTIATE TO SOME LEVEL OF COOPERATION UNDER P.L. 280.

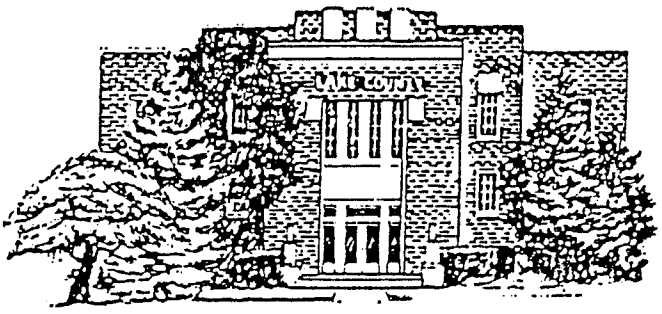
RESPECTFULLY,

MIKE HUTCHIN, CHAIR
LAKE COUNTY COMMISSIONERS

COUNTY COMMISIONERS
DON PETERSON
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
LORIN JACOBSON



ASSESSOR
LENORE A ROAT

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
GLENNADENE FERRELL

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

EXHIBIT #16
DATE 3-16-93
SB-368

Jan. 3, 1991

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

This is to follow-up on our telephone conversation indicating that we are unable to keep our appointment with you on January 8 due to conflicting schedules of fellow commissioners. We would all like to be present when we meet with you and the Councilmen.

May we suggest an agenda be followed when we get together and propose the following items that we could base our discussion:

1. How do you perceive we could have a more cooperative arrangement between Lake County and the Tribes.

2. Issues of mutual concern specifically addressing environmental resource management, etc.

Reservations are confirmed for a noon luncheon on Tuesday, January 15th at the Pondera Restuarant here in Polson. If for some reason this is not convenient, please advise.

Thank you, Mickey and looking forward to meeting with you and your fellow Councilmen.

Sincerely,

Gerald L. Newgard
Lake County Commissioner

jd

cc: Jerry Sorensen
Paddy Trusler

MAY 13 92 Sheriff Goldrick Commissioners Co. Att. met at Council Hd Qtrs.

PROPOSED COOPERATIVE LAW ENFORCEMENT AGREEMENT
WITH CONFEDERATED SALISH AND KOOTENAI TRIBES,
AND LAKE COUNTY

1. Tribal Police Officers that are P.O.S.T. certified would be appointed as Lake County Deputies.

Lake County Officers that are P.O.S.T. certified would be appointed as Confederated Salish & Kootenai Tribal Officers.

2. Lake County Coroner would appoint two (2) Tribal Officers, that qualify, as Deputy Lake County Coroners to handle any death of enrolled member.

3. Confederated Salish & Kootenai Tribes' insurance carrier would agree to insure all Tribal Officers acting as Deputy Sheriffs and Deputy Coroners.

4. Lake County Officers would be the primary investigative authority investigating crimes on fee land.

Tribal Police would be the primary investigative authority investigating crimes on tribal land or land held in trust, and fee land owned by enrolled members.

5. The Tribal Prosecutor and the Lake County Attorney would prepare guidelines for the prosecution of felony cases when the suspect is an enrolled member of any federally recognized tribe.

The Tribal Prosecutor and the Lake County Attorney would review each such alledged felony case pursuant to these guidelines to determine whether it should be filed in State for Tribal Court.

6. All felony complaints in Lake County would be prosecuted through the Lake County Attorney's Office. Felony suspects would be housed in the Lake County Jail.

7. Misdemeanor complaints against an enrolled member of any federally recognized tribe, would be handled by the Tribal Court Systems. Suspects would be housed in the Tribal Jail.

EXHIBIT #16
DATE 3-16-93
SB-368

8. Misdemeanor complaints against non-members would continue to be handled by the Lake County court system. All suspects would continue to be housed in the Lake County Jail

9. Delinquent youths who are enrolled tribal members would be transferred to the Tribal Youth Court. Delinquent youths who are not enrolled Tribal Members would be transferred to the State Youth Court.

10. Tribal Court would have a public defender representing defendants, and have an attorney prosecuting in criminal cases. Traffic conviction information would be sent to the State Department of Justice.

11. There would be a weekly exchange of all court dispositions between Tribal Courts and State Courts, and all courts would make their criminal court records available to the press.

12. A list of all Tribal members would be provided to the Lake County Sheriff or proof of enrollment would be supplied prior to the release of a suspect to the tribes.

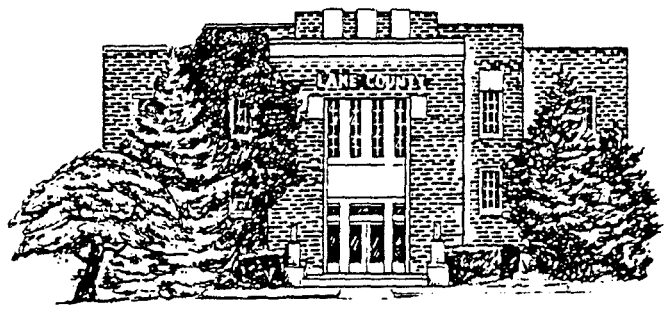
13. Prior to initiating this agreement, the prosecutors, public defenders and judges from Tribal and State courts would meet to discuss a format for initiating and transferring cases in each court system.

14. Prior to initiating this agreement, Tribal and State judges would review their sentending guidelines to assure that Tribal ordinances and State laws concerning minimum and maximum sentences are observed and that sentences are not unduly disparate between each court.

COUNTY COMMISSIONERS
MIKE W. HUTCHIN
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



ASSESSOR
LENORE A. ROAT

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

L A K E C O U N T Y

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

July 8, 1991

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

It has been quite some time since we had our meeting in your office where we attempted to put some ideas forward for discussion on alternatives to retrocession.

In fact, it will be two months come Saturday. Something of this magnitude certainly can consume much time and energy. We just felt we would take this opportunity to remind you of our continued interest to discuss possible options with you and look forward to hearing from you on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS

Gerald L. Newgard

Gerald L. Newgard, Chairman

Ray Harbin

Ray Harbin, Member

Mike W. Hutchin

Mike W. Hutchin, Member

jd

COUNTY COMMISSIONERS
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RAY HARBIN
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GERALD L. NEWGARD
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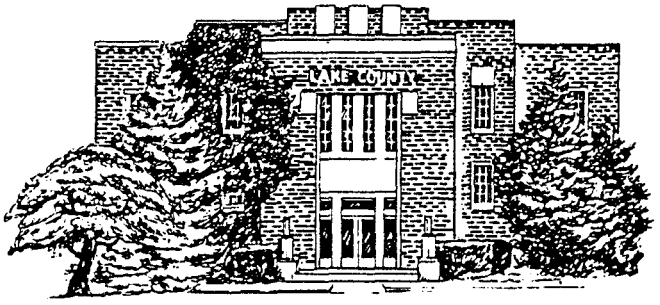

ASSESSOR
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COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

L A K E C O U N T Y

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

August 8, 1991

EXHIBIT #16
DATE 3-16-93
SB-368

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

It has been quite some time since we had our meeting in your office where we attempted to put some ideas forward for discussion on alternatives to retrocession.

In fact, it will be three months come Saturday. Something of this magnitude certainly can consume much time and energy. We just felt we would take this opportunity to remind you of our continued interest to discuss possible options with you and look forward to hearing from you on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS

Gerald L. Newgard

Gerald L. Newgard, Chairman

Ray Harbin

Ray Harbin, Member

Mike W. Hutchin

Mike W. Hutchin, Member

jd

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
Fax (406) 675-2806

RECEIVED
OCT 15 1991
BOARD OF LAKE COUNTY
COMMISSIONERS

October 10, 1991

Joesph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. "Mickey" Pablo - Chairman
Laurence Kenmille - Vice Chairman
Elmer "Sonny" Morigeau, Jr. - Secretary
Joe Dog Felsman - Treasurer
Louis Adams
Lloyd Irvine
Patrick Lefthand
Henry "Hank" Baylor
Antoine "Tony" Incashola
John "Chris" Lozeau

Lake County Commissioners
Lake County Courthouse
Polson, Montana 59860

Re: Your "Proposed Cooperative Law Enforcement Agreement with Confederated Salish and Kootenai Tribes, Lake County and State of Montana"

Gentlemen:

This letter is in response to the above-referenced proposal put forth by Lake County officials. This proposal was presented by Lake County officials, accompanied by a representative from the Attorney General's office, to a few members of the Tribal Council.

After careful study of the proposal, we conclude that the proposal is seriously flawed. The Tribes question whether the proposal was offered to elicit a serious response or, instead, submitted primarily for theatrics and publicity. The fact that its contents were immediately used in a press release suggests the latter.

If the proposal was earnestly advanced, it reveals some pervasive misunderstandings, misinformation, and faulty assumptions about the status of tribal and federal Indian law and the structure and processes of the tribal justice system. There is also a glaring, overriding omission: it does not contain a cross-deputization proposal between the Tribes and Lake County.

In many respects the proposal is not one for cooperation but, instead, promotes curtailment of the exercise of *existing* Tribal jurisdiction. For example, the proposal to limit the tribal police's investigative authority to crimes committed on Indian trust land would constitute a serious restriction on tribal law enforcement jurisdiction. Tribal police presently have the authority to make arrests anywhere within the exterior boundaries of the Flathead Indian Reservation. This proposed trust lands limitation is repugnant to the Tribes and illustrates Lake County's continued deep-seated resistance to tribal law enforcement jurisdiction over our own people.

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Aspects of the proposal illustrate a lack of familiarity with the tribal justice system in that it proposes to require justice procedures that are already in place (many of them for a decade or more).

The proposal is unclear on the extent to which it represents the position of the state of Montana (although the title suggests it is presented as a State/County proposal). We would certainly envision any cooperative law enforcement proposal with the state of Montana to be more comprehensive than the one submitted.

In conclusion, our overall reaction to the proposal is one of disappointment and conjecture. It is difficult to believe that a proposal as flawed and deficient as this would warrant all of the publicity Lake County sought.

The Tribes wish to discuss *realistic* possibilities for cooperation such as: cross-deputization, transfers and referrals of juvenile and adult offenders, commitments and referrals of incapacitated persons, utilization of tribal coroners, and the appropriate choice of law to be applied in certain classes of cases. If this is your intention, we stand ready to meet with you to prepare an agenda for future conversations.

Sincerely,

Michael T. Pablo
Chairman of the Tribal Council

cc: Attorney General Marc Racicot
Sheriff Joe Geldrich
County Attorney Larry Nistler

COUNTY COMMISSIONERS
MIKE W. HUTCHIN
District One
RAY HARBIN
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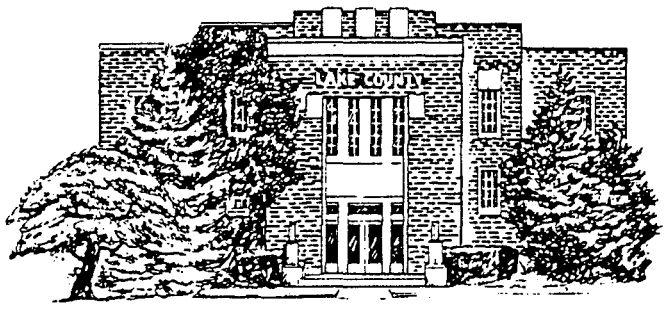

ASSESSOR
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JOE GELDRICH

CLERK OF COURT
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SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

October 21, 1991

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

Thank you for your letter of October 10. Lake County is, contrary to intimation, very serious about engaging in meaningful dialogue involving the items we previously enumerated as well as those presented in your letter. It appears you misunderstood the purpose of the 12 point proposal we provided you. In the meeting we had with you, we asked that these and any other issues relevant be discussed in depth, and asked when you would like to meet to consider them.

We feel there is plenty of room for discussion and education in this extremely complicated area of law.

We believe, as we are sure you do, that the ultimate well being of all of the people who reside on and travel through the county and reservation is most important as we aspire to reach some consensus. We are willing to meet at your convenience.

In the interest of creating a relatively small working group, we would suggest we have three elected county officials, the sheriff and legal counsel, and hope you consider a composition similar to this as Tribal representation to the group.

We look forward to further communications on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS

Gerald L. Newgard, Chairman

Ray Harbin, Member

Mike W. Hutchin, Member

LAKE COUNTY ATTORNEY'S OFFICE

LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59860-2183
(406) 883-6211

EXHIBIT #16
DATE 3-16-93
SB-368

Larry J. Nistler, County Attorney
Mitchell A. Young, Deputy
Kathleen O'Rourke-Mullins, Deputy

Administrative Assistant
Susan Hill
Marty Corse

December 27, 1991

Marc Racicot
Attorney General
Justice Building
215 North Sanders
Helena, Montana 59620

Re: PL 280 On the Flathead Reservation

Dear Marc:

As you recall, your office assisted in arranging a meeting with the Flathead Tribal Council in May of this year. The response from the Council has been discouraging at best. The enclosed copies of correspondence between Lake County and the Tribe are self-explanatory.

Unfortunately, the Tribal Council has taken the matter one step further and begun de facto retrocession. Tribal Court prosecutor Najel Bird has acknowledged that the Council has instructed her office to retain prosecution on what would be classified as felonies in the State courts. I am unable to determine when this policy was placed into effect. However, no felony criminal cases initiated by tribal officers against tribal defendants have been referred to my office for prosecution since June of this year. This includes adult felons and juvenile delinquents.

I have voiced my concern about the lack of protection afforded to felony crime victims to Ms. Bird and to Tribal Council Chairman Mickey Pablo. I have received no response from them.

Due to the Tribe's lack of referrals, I am unaware of the total number of felony cases they have assumed and prosecuted as misdemeanors, or the number of serious juvenile offenders they have retained. I have learned that the felony drug sale case files developed through the joint Mission Valley Drug Task Force will only be prosecuted as misdemeanors. I was also contacted in October by a Flathead tribal woman who had been viciously raped. The details she related indicated that felony charges of Aggravated Burglary, Sexual Intercourse Without Consent and Felony Assault should have been filed. She advised me that the former tribal prosecutor assured her that felony charges would be brought. Instead, the Defendant, a Blackfeet member, was convicted on

misdemeanor trespass and assault charges. Other recent cases I have learned of include an Aggravated Burglary and Aggravated Assault in which a lead pipe was used and an Incest case. Both cases were apparently prosecuted as misdemeanors.

I would appreciate your suggestions and assistance in arranging further dialogue with the Tribal Council. If this is not possible, I would appreciate your advice on the use of an investigative subpoena policy to require the tribal prosecutor and tribal officers to provide information to Lake County on felony offenses.

Sincerely,

LARRY J. NISTLER
Lake County Attorney

LJN/sh

cc: Lake County Board of Commissioners

ATTORNEY GENERAL
STATE OF MONTANA

Marc Racicot
Attorney General

Justice Building
Helena, Montana 59620

March 24, 1992

Ray Harbin, Commissioner
Mike Hutchin, Commissioner
Gerald L. Newgard, Commissioner
Lake County Commissioners
Lake County Courthouse
Polson MT 59860

Re: Cooperative Law Enforcement Agreement on the Flathead Indian Reservation

Dear Commissioners:

During the past year there has been some discussion regarding an agreement between the Confederated Salish and Kootenai Tribes of the Flathead Reservation and the governments of the counties in which the Reservation lies regarding law enforcement on the Reservation. This discussion comes in light of the legislation proposed during the last regular legislative session which would authorize Montana to retrocede criminal jurisdiction on the Flathead Reservation to the United States. This office is interested in furthering dialogue on this subject because effective law enforcement is of central concern to this office and generally any attempt to work cooperatively at this endeavor heightens its success and benefits the community as a whole.

It is my understanding that the Tribal Council of the Confederated Salish and Kootenai Tribes and the County Commissioners of Lake County have indicated that they would be willing to engage in discussions regarding a law enforcement agreement. Therefore, in an effort to further these discussions and to set some parameters for such discussions, I would like to invite the members of the Tribal Council and the County Commissioners of Missoula, Sanders, Flathead and Lake Counties, along with legal counsel to the Tribal Council, the Tribal Chief of Police, and the county attorneys and the sheriffs of Missoula, Sanders, Flathead and Lake counties to meet with me in April for initial discussions regarding a law enforcement agreement.

EXHIBIT #16
DATE 3-16-93
SB-368

The purpose of this meeting would be to determine the areas to be included and the best manner in which to proceed in negotiating such an agreement. I propose that we meet in Conference Room C209, Side 2, in the Cogswell Building, Helena, Montana, from 1:00-4:00 p.m. on Monday, April 13, 1992. I set this date without prior consultation with any participants; therefore, please let me know as soon as possible if you are able to attend or to send a representative to this meeting. If the date selected is not workable for a majority of those interested I will attempt to find another date.

I look forward to beginning discussions in this very important area and would welcome input from all as to those areas of concern which you feel should be on the agenda of this first meeting.

Thank you for considering attendance at this important meeting.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

EXHIBIT # 17
DATE 3-16-93
SB 368

Testimony Presented to the
House Judiciary Committee
on Senate Bill 368 by Joseph Mc Donald
March 16, 1993

Thank you for conducting this hearing. Concurrent jurisdiction has been a problem for our Indian People on the Flathead Indian Reservation almost since the day of its enactment. My Uncle, the late Walter McDonald, was greatly responsible for the Tribe supporting State legislation enacting legal authorizations provided in U.S. Public Law 280.

He told me that at the time, in early 1963, it was the only way that the tribes could maintain law and order. The Tribes resources at that time were very limited. Rental on Kerr Dam was only $175,000 per year, and stumpage on the timber was less than ten dollars($10) per thousand board feet. Total Tribal income per year was less than $250,000 per year. The Federal Government was doing very little to provide law enforcement.

Since the time our Tribe and State entered into concurrent jurisdiction a great deal of positive change has taken place on the reservation. Annual Tribal Income is now near $20 million, and the total expenditure for the tribal governmental programs is $70 million. The number of Tribal employees has grown to twelve hundred. Last year My Uncle passed away. He told me before he died, that he thought it was now time to retrocede from concurrent jurisdiction. He felt that way because of the development of the Tribe and its ability to care for itself.

The Tribe has developed an outstanding Law Enforcement Department. The police officers are well trained and the equipment is always up to standards. Out Tribal court is one of the best in Indian Country. The Judges and Court personnel are well educated and trained for their positions. Our Chief Judge is a recent graduate of the University of Montana School of Law. One of our Associate Judges is a retired BIA Superintendent. Our Tribal Court has also recently developed a Civil Appellate Court. One of the Appellate Judges is an attorney for the Native American Rights Fund and travels to Pablo for Appellate hearings.

As you know , I am the President of Salish Kootenai College. The College was established by our Tribe because our Indian people were having only limited success in the State University System. They are now having a great deal of success in their own college.

The Indian people are not having success with concurrent jurisdiction. They need to be able to do their own policing, hold their own court, and render their own decisions and penalties for crimes committed. Similar to Higher Education success in Law Enforcement will come only when our Tribe can take care of its own.

Presently there is a great deal of antagonism between the county law enforcement and the Indian People. The antagonism is somewhat noticeable in the City and Justice Courts on the reservation. Many of you received a letter from the clerk of Lake County Justice court. It was so full of racial prejudice, and this is the court where misdemeanor crimes are tried.

This antagonism is so unnecessary. Much of it will end if you will let the Tribe handle its own misdemeanor crimes and those felonies that the Tribe, the Governor, and the Attorney General agree upon.

Lets put an end to Indian People feeling victimized by a police system and court system that they feel they can't change.

Lets put an end to the excessive county expense of enforcing misdemeanor crimes committed by Indians.

Lets put an end to the counties having to pay for prisoners care and court costs for misdemeanor crimes committed by Indians.

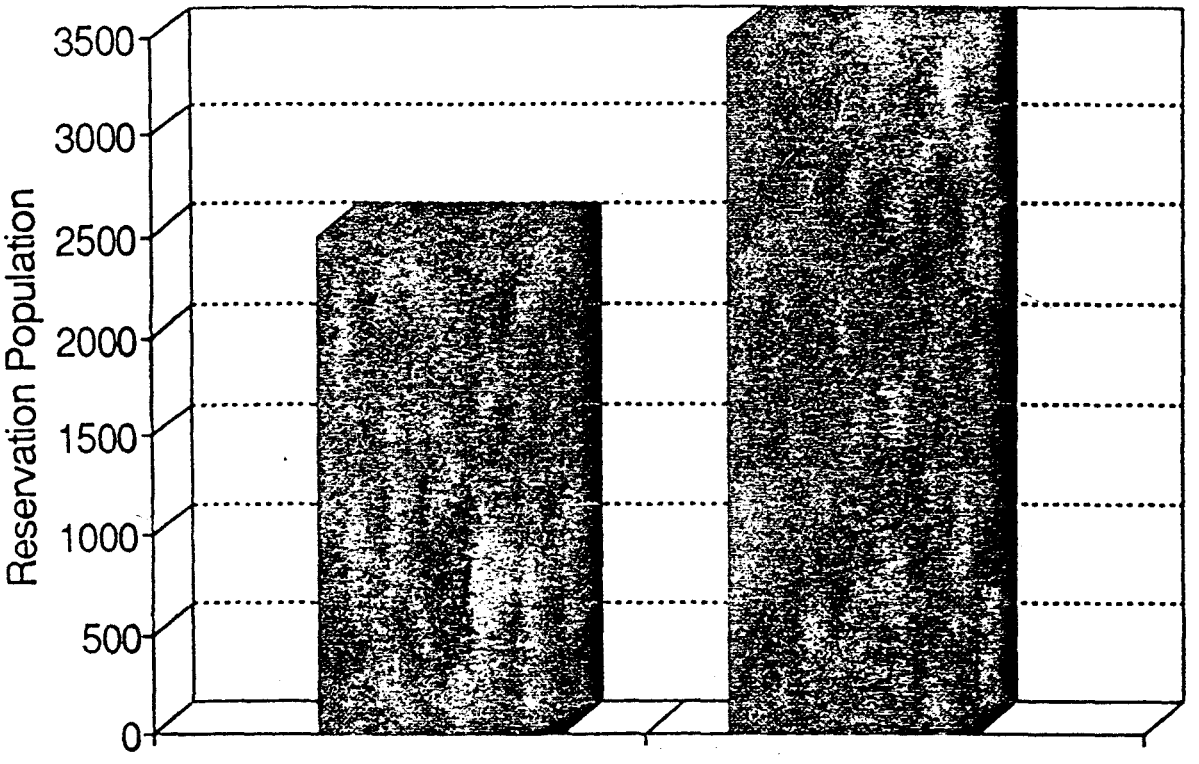
Lets relieve the Taxpayers of this cost.

Lets pass Senate Bill 368, and have the tribe take care of its own misdemeanor crimes.

EXHIBIT #17
DATE 3-16-93
SB-368

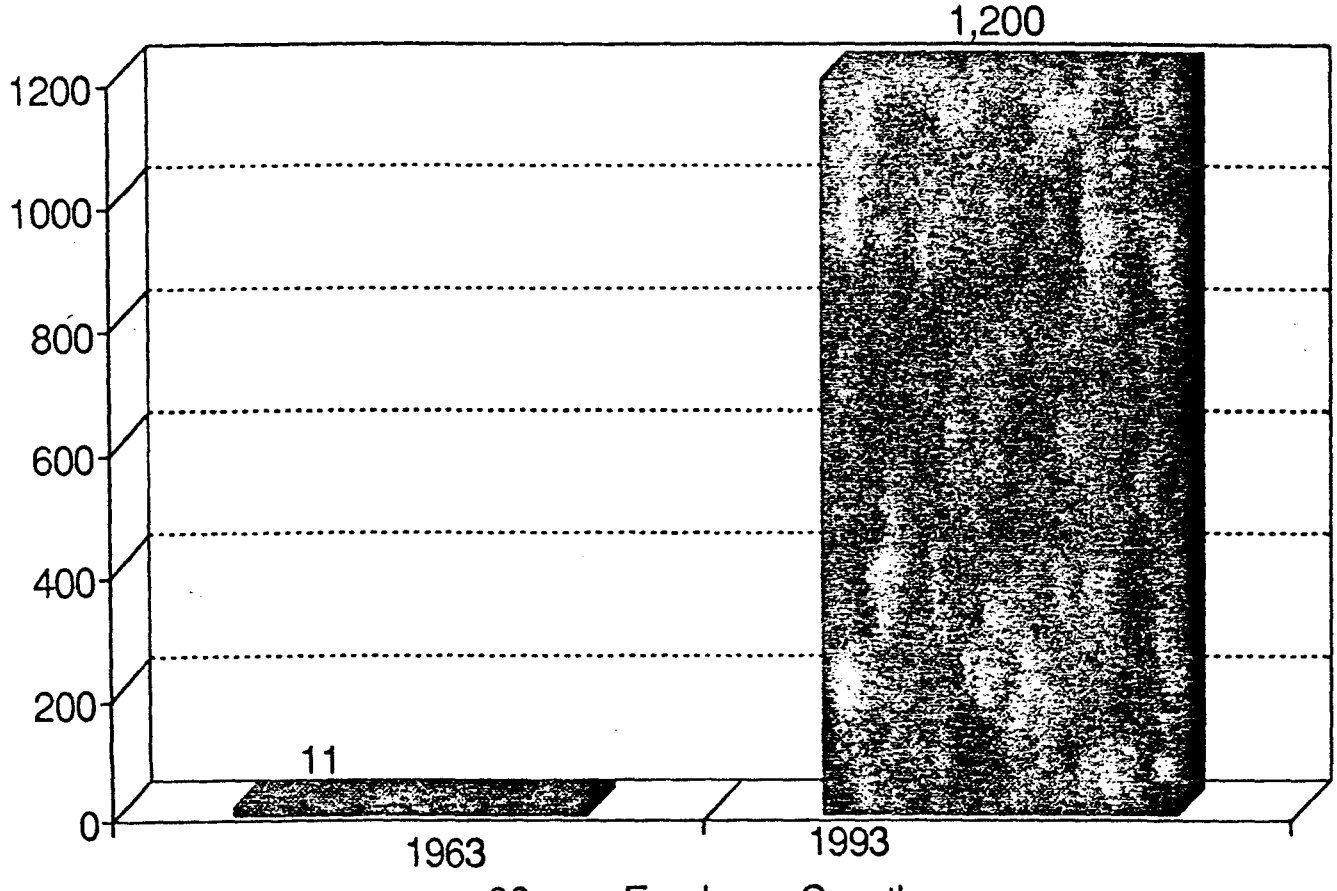
Salish Kootenai Population Growth

1963 to 1993



Salish Kootenai Employee Growth

1963 to 1993

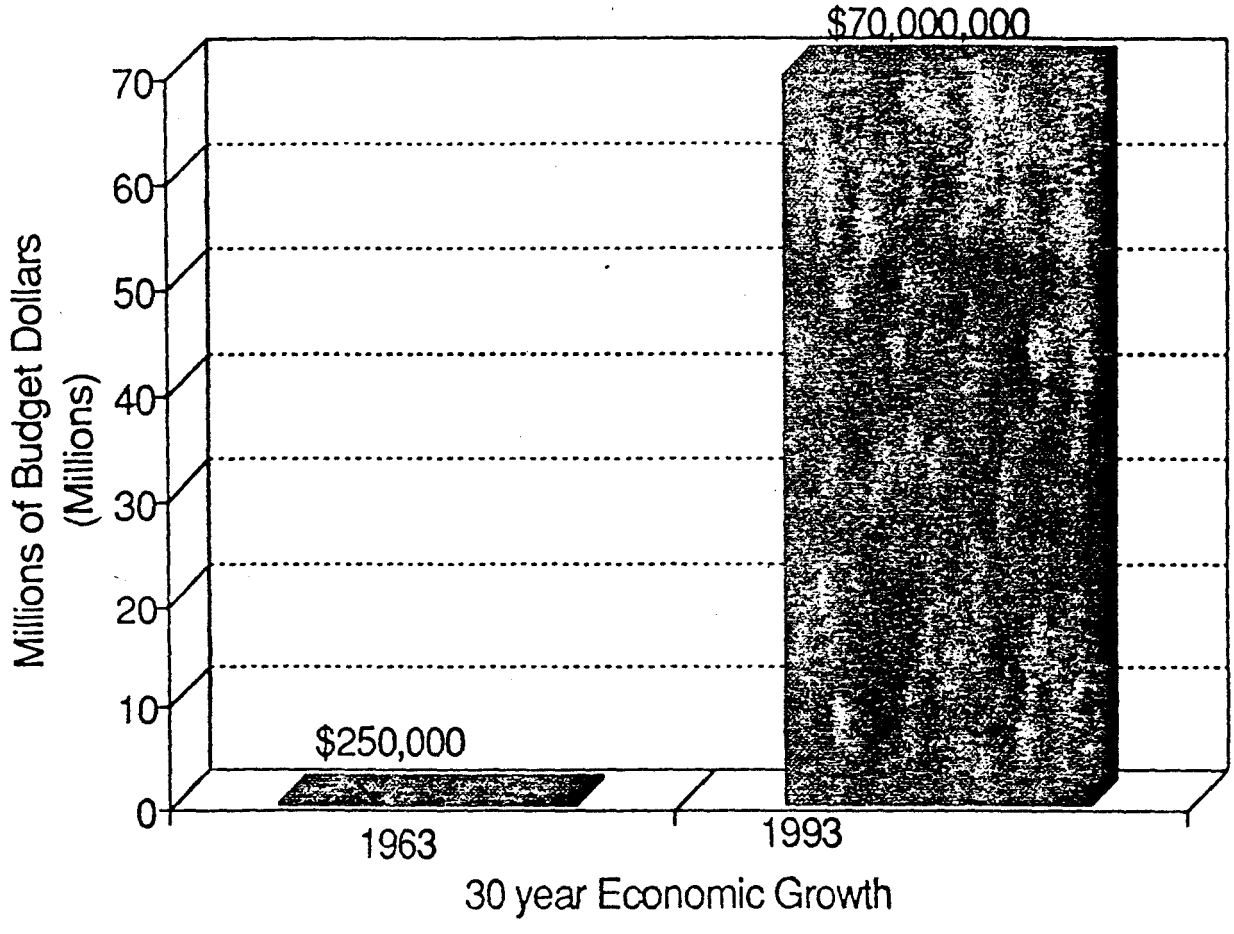


30 year Employee Growth

EXHIBIT #17
DATE 3-16-93
A SB-368

Salish Kootenai Economic Growth

1963 to 1993



MISSOULA COUNTY MC

BOARD OF COUNTY COMMISSIONERS
200 W BROADWAY ST
MISSOULA MT 59802-4292

(406) 721-5700

BCC-93-159
March 15, 1993

EXHIBIT #18
DATE 3-16-93
SB 368

Representative Russell Fagg, Chairman
House Judiciary Committee
State Capitol
Helena MT 59620

Re: SB 368 - Partial Retrocession

Dear Representative Fagg:

We are writing to express our support for SB 368, which would authorize the Salish-Kootenai Tribes to partially retrocede from Public Law 280 jurisdiction.

The southern portion of the Flathead Reservation lies within Missoula County. Therefore, this bill directly affects Missoula County. While Missoula County did not oppose the full retrocession bill that was considered by the Legislature last time, we did have some concerns with the bill. Missoula County Attorney Robert "Dusty" Deschamps (and other counties) have expressed reservations about returning federal jurisdiction for major crimes committed by Indians on the Reservation. This concern was discussed between the Tribes, affected counties, and the State last year.

The Tribes have, this time, opted to exclude major crimes from the scope of their bill and are requesting, instead, that Indian misdemeanor crimes be transferred to Tribal Court. We feel that by modifying their request in this way, the Tribes have directly taken this over-riding concern into account. Furthermore, as the bill is written, the Tribes can only reassume exclusive jurisdiction over civil areas and lessor felonies if the Governor agrees. This concession is extremely reasonable and allows for flexibility in the negotiations and implementation.

Tribal officials have met with county law enforcement officials about the bill. There is a mutual understanding and willingness to work together in implementing the transition in a way that we believe will benefit all county residents. We view the bill as a vehicle to improve cooperative law enforcement and, at the same time, reduce financial burdens on the county government.

The Salish-Kootenai law enforcement, judicial, and substance abuse programs are professional and respected and are better suited to serve tribal needs. The Tribes have dedicated substantial resources to these programs, further demonstrating their commitment.

For these reasons, we support the Tribes in their efforts to reassume the responsibility and the costs associated with partial retrocession. We stand ready and willing to work with the Tribes, the Governor, and the Attorney General on this matter. Thank you.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Ann Mary Dussault, Chair

Barbara Evans, Commissioner

Jim Hart

EXHIBIT # 19
DATE 3-16-93
SB 368

SB 368
TESTIMONY

While I find the concept of retrocession agreeable from a philosophical point of view, I must oppose this bill from a pragmatic prospective. The implementation of this bill, should it pass, will be extremely costly, between the litigation and the social division it would create on the reservation.

If the problem is that Tribal members are not fairly treated under the current judicial system, how would exchanging that inequity for one to be imposed on the non-member majority be an improvement? Under the current system members and nonmembers may vote into or out of office any judge, sheriff, city council member or county commissioner they want. However, under the proposed bill nonmembers, whether Indian or white have, no voice in selecting tribal judges or council members; yet, if you are the victim in a crime committed by a member you are subject to the tribal court's decisions.

The system of law in the existing court system has been developing since the Magna Charta. How do the Tribal courts and their rules compare? Can I go into that court and expect to follow the same procedures and rules of evidence that I now know?

I also wonder about their request to have culturally relevant punishments, when I hear about a predatory juvenile sex offender that continues to roam the streets of Ronan looking for his next victim. This youth has never been punished beyond a one year probation, nor has he ever been treated. In fact none of the state facilities for youth offenders will accept him, as he has not gone through their judicial system, only the Tribal system. If this is what culturally relevant means, then I think my second grade daughter should stop attending her Culture class in school.

I hope my questions show that this bill is not one that should be passed in haste, but rather that retrocesion on an open reservation such as the Flathead Indian Reservation may only be implemented a bit at a time, if at all.

Submitted by Mark E. Nelson, 212 1st Avenue SE, Ronan, MT 59864

I oppose this bill.

Mark E. Nelson

EXHIBIT # 20
DATE 3-16-93
SB 368

PROPOSED COOPERATIVE LAW ENFORCEMENT AGREEMENT
WITH CONFEDERATED SALISH AND KOOTENAI TRIBES,
AND LAKE COUNTY

1. Tribal Police Officers that are P.O.S.T. certified would be appointed as Lake County Deputies.

Lake County Officers that are P.O.S.T. certified would be appointed as Confederated Salish & Kootenai Tribal Officers.

2. Lake County Coroner would appoint two (2) Tribal Officers, that qualify, as Deputy Lake County Coroners to handle any death of enrolled member.

3. Confederated Salish & Kootenai Tribes' insurance carrier would agree to insure all Tribal Officers acting as Deputy Sheriffs and Deputy Coroners.

4. Lake County Officers would be the primary investigative authority investigating crimes on fee land.

Tribal Police would be the primary investigative authority investigating crimes on tribal land or land held in trust, and fee land owned by enrolled members.

5. The Tribal Prosecutor and the Lake County Attorney would prepare guidelines for the prosecution of felony cases when the suspect is an enrolled member of any federally recognized tribe.

The Tribal Prosecutor and the Lake County Attorney would review each such alledged felony case pursuant to these guidelines to determine whether it should be filed in State for Tribal Court.

6. All felony complaints in Lake County would be prosecuted through the Lake County Attorney's Office. Felony suspects would be housed in the Lake County Jail.

7. Misdemeanor complaints against an enrolled member of any federally recognized tribe, would be handled by the Tribal Court Systems. Suspects would be housed in the Tribal Jail.

8. Misdemeanor complaints against non-members would continue to be handled by the Lake County court system. All suspects would continue to be housed in the Lake County Jail.

9. Delinquent youths who are enrolled tribal members would be transferred to the Tribal Youth Court. Delinquent youths who are not enrolled Tribal Members would be transferred to the State Youth Court.

10. Tribal Court would have a public defender representing defendants, and have an attorney prosecuting in criminal cases. Traffic conviction information would be sent to the State Department of Justice.

11. There would be a weekly exchange of all court dispositions between Tribal Courts and State Courts, and all courts would make their criminal court records available to the press.

12. A list of all Tribal members would be provided to the Lake County Sheriff or proof of enrollment would be supplied prior to the release of a suspect to the tribes.

13. Prior to initiating this agreement, the prosecutors, public defenders and judges from Tribal and State courts would meet to discuss a format for initiating and transferring cases in each court system.

14. Prior to initiating this agreement, Tribal and State judges would review their sentending guidelines to assure that Tribal ordinances and State laws concerning minimum and maximum sentences are observed and that sentences are not unduly disparate between each court.

EXHIBIT #21
DATE 3-16-93
SB-368

Exhibit #21
March 16, 1993
Senate Bill No. 368

Exhibit No. 21 is a petition with signatures in opposition to Senate Bill 368. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-2101. The phone number is 444-2694.

EXHIBIT # 22
DATE 3-16-93
SB 4,5,242

March 9, 1993

House Judiciary Committee
Montana Legislature
Helena, Montana 59601

Dear Committee Members:

This letter is in support of Senate Bills 4, 5, and 242.

We must return the power of this great state of Montana to the people as a whole, not just to a specific class of people. Confidence in government, as well as the legal system, has deteriorated to an all time low.

This is the time for the House Judicial Committee, and the House, to demonstrate to the people of our State, that our Justice system is of the people, for the people, by the people, and not just a select few.

All too often, our seniors on fixed income, and our poor, are deprived of Justice through the courts, simply because they cannot afford an attorney, and are unable to speak for themselves.

The power to remove Judges, who have become incompetent, or have otherwise rendered themselves unworthy of public trust, should lie with the people, and not within the circle of their profession.

It is the right of every citizen to complain of a Judge's actions, without fear of retaliation. It is also the right of every citizen, to have access to complaints that have been filed with the State, against certain Judges.

Now is the time for change, now is the time for leaders with foresight and wisdom, to demonstrate that every citizen has access to our legal system. Therefore, every citizen, regardless of race, sex, religious belief, or education, will be made to feel that they are a part of the system in our State.

Sincerely,

John M. Rice

John M. Rice

EXHIBIT #23
DATE 3-16-93
SB 45,242

March 16, 1993
2909 3rd Ave. No.
Great Falls, MT. 59401

Mr. Russell Fagg, Chair
House Judiciary Committee
Fax # 444-4105

Dear Mr. Fagg:

Please accept and distribute to the members of the House Judiciary Committee the following fax that I received this morning from Senator Max Baucus, supporting the passage of Senate Bill 37 with no exemptions. Thank you.

Sincerely,

Kelly Vollrath

MAX BAUCUS
MONTANA

EXHIBIT # 27
DATE 3-16-93
SB 4,5,242

WASHINGTON, DC
(202) 224-2651
MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510-2602

March 16, 1993

Mr. Kelly Vollrath
2909 Third Avenue North
Great Falls, Montana 59401

Dear Kelly:

Thank you for getting in touch with my office concerning the anti-stalking legislation that is currently before the Montana State Legislature. I appreciate your bringing this matter to my attention.

I share your deep concern for people who have been victims of stalking in our state, and across the country. I also agree that we need to have strong legislation in place that makes stalking a punishable crime. Such legislation will not only help deter stalking in our state, but it will also protect people from unwelcome harassment or from being the victim of a senseless violent crime. Therefore, like you, I support this anti-stalking legislation that is currently being debated in the Montana State House of Representatives Judiciary Committee -- without any exemptions or amendments. I firmly believe that adding exemptions will only weaken the effectiveness of this important bill.

Again, thank you for contacting me about this matter and I hope you will not hesitate to let me know if I can be of further assistance.

With best personal regards, I am

Sincerely,

Max Baucus

MSB/dwf

BILLINGS (406) 657-6790 | BOZEMAN (406) 586-6104 | BUTTE (406) 782-8700 | GREAT FALLS (406) 761-1574 | HELENA (406) 449-5480 | KALISPELL (406) 756-1150 | MISSOULA (406) 329-3123

MAR 16 '93 11:08AM SEN BAUCUS-WASH DC

EXHIBIT #25
DATE 3-16-93
SB 4, 5, 242

Exhibit #25
March 16, 1993
Senate Bills No. 4, 5, and 242

Exhibit #25 is a position paper on legal reform prepared by HALT, an organization of Americans for Legal Reform, as testimony in support of SB 4, SB 5, and SB 242. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 23

DATE March 10, 1993 SPONSOR(S) S. Aklestad

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Rice		✓	
Phyllis A Kaardrea		✓	
Sara Lapsworth	Self	✓	
Lisa Burnett	SD 42	✓	
Daval Kerfoot	self	✓	
Jeremy O'Neil	Youth of Montana	✓	
Walt Dupea	Self Bar of Bigfork	✓	
John Connell	self	✓	
Mary McCue	Mt Clinical Mental Health Counselors ass'n	✓	
Atwood D. Stickney		✓	
Tom Hiss	Self	✓	
Bill Carter	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE March 16, 1993 SPONSOR(S) S. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Annabell White		✓	
Fray Dimee		✓	
MARVIN STOPS		✓	
Mike A. Finley		✓	
Rob Sand		✓	
Richard Sawyney	Chippewa-Cree Tribe	✓	
Dena Savage	CS+KT	✓	
ROSEMARY CAUE	CS+KT	✓	
MARY STASSO	Salish & Kootenai Tribe	✓	
Rep Jay Stovall		X	
Arwood D. STICKney			✓
Shirlen Plenty	Crow Tribe	✓	
Evelyn Sun Rise Plenty	Crow Tribe	✓	
Floyd W Irvin	CS+KT	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE March 16, 1993 SPONSOR(S) S. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jerome White Crow Agency		✓	
Victoria Matt Crow Agency		✓	
Debra A. Lage		✓	
Marie Jefferson		✓	
MARK E. NELSON	City of Kevon Resident representing myself		✓
Brenda Desmond	myself	✓	
Petina Spreadbelo	CS & KT	✓	
Clara R Bull Tail	Crow Tribe of Indians	✓	
Bill Carter	Lake County Land Comm		✓
Tom Allsop	Self	✓	✓
Phillip Yellow Robe			
Lonnie Dooley	Crow Tribe	✓	
Raymond Big Day Sr	Crow Tribe	✓	
Ellen Swaney	self.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO HB 368

DATE March 16, 1993 SPONSOR(S) L. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Hanson	H.D. #9	✓	
Joe Aldrich	Lake Co. S.O.		✓
Pat Smith	CSKT	✓	
Majel Bird	CSKT	✓	
Jayne McManus	CSKT	✓	
Joe McDonald	CSKT	✓	
Clarence Hunter Skaw	CS+KT	✓	
Wm Pete Dutchman			
Janice Bear Crane		✓	
Rhoysius Whitethorn		✓	
Henri Burshame		✓	
Arthur Allen Jr.		✓	
Cyril S. Not Afraid		✓	
Elton L. Backbone		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Both 3121A

DATE 3-16-93

HOUSE ~~SENATE~~ COMMITTEE ON JUDICIARY HB 368

BILLS BEING HEARD TODAY: _____

Name	Representing	Bill No.	Check One Support	Oppose
Gina Johnson		SB 368		✓
Dennis D. Voss		S. 11		✓
Glenn Drake		S.B. 368		✓
Joe McKinney	Fun Factory Great Falls	H.B. 191	X	
Peggy L. Hoppe		~~SB~~ 368		X
Paddy Trusler	Lake Co.	SB 368		X
Mike Hutchin	Lake County	SB368		X
GEORGE OCITENSKI	CONF. SALISH-KOOTENAI	SB368	X	
M. Elliott A. Young	Lake Co. Atty.	SB 368		X
Dave Stipe	Lake Co Com	SB 368		✓
Deanne Sandholm	A. H.	SB 368	✓	
ARTHUR E. BARBER		SB 365		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE March 16, 1993 SPONSOR(S) J. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Emma Swan	Flathead - SKC	✓	
Anita Joseph	Kootenai	✓	
Tinka M. Oldeik	Crow Nation	✓	
Cedar R Bull Tail	Crow Nation	✓	
Art Big Crane	Flathead	✓	
Naomi Billedeaux	Flathead - SKC	✓	
LISA Little Boy	Flathead - SKC	✓	
Ed Bigcrane	Pend Oreille	X	
Steve Big Crane	Pend Oreille	✓	
Linda Gryczan	self	X	
Bryan D. Spellman	self	X	
Katie Tapeo	Flathead - SKC	X	
Sarah Holt	Flathead - SKC	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 362

DATE March 16, 1993 SPONSOR(S) S. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Katherine Big Hail		✓	
Barbara Big Hail		✓	
Alec A. Stewart		✓	
Daniel Bravo		✓	
Sandra Other Medicine		✓	
Theresa Gun Shows		✓	
Juanita Stands Morning		✓	
Charlene Laverdure		✓	
Tatanna Big Lake		✓	
[illegible]		✓	
Cenary Plenty Hill		✓	
[illegible]		✓	
Alice Runningwater		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. LB 368

DATE March 16, 1993 SPONSOR(S) J. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Elizabeth Stewart	Self	✓	
Newton Stewart		✓	
Elaine Small		✓	
Jeanette Adams		✓	
Dorothea Adams		✓	
Pauline Small		—	
Joy Matt		—	
Appadell White		✓	
Ivan L. Arnold		✓	
Isaac Adams Sr.		✓	
Mary A. Jones		✓	
Edith M. Burge		✓	
Pete Jones		—	
Duane O'Neal		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE 3-16-93 SPONSOR(S) S. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MARVIN STOPS	SELF	✓	
Addee Redfeather Eckhart	Crow Tribe	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE 3-16-93 SPONSOR(S) Doherty

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Willis Plain Father Crow Agency, Mt.	Crow Tribe	✓	
Dennis Plain Feather	Crow Tribe	✓	
Rosemarie Kelly Blanchard Crow Agency, MT	Crow Tribe	✓	
Alice Cummings Pretty, Crow Agency, MT	Crow Tribe	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368

DATE 3-16-93 SPONSOR(S) S Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
George M Schiller	Self	O	
Ellen Clausen			
L Jorgenson			
Lisa Rice			
Eric Brien, Crow Agency MT		X	
Paul D Watt Jr. Crow Agency MT		X	
JASon Adams	salish & Confederated Kootenai tribe	X	
FRANK SHERIDAN	SALISH + Kootenai Tribe	X	
NEIL J. DODGE	SELF		
Phalene L White		X	
Roberta Stewart		X	
Rachel Howe	SELF	X	
BARRY K. HOWE Crow Agency MT 59022	SELF	X	
Phyllis A DANDREA			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 368

DATE 3-16-93 SPONSOR(S) L. Doherty

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joyce Good Luck	Member - Crow	X	
EUGENE LANCE	Member - Crow tribe	X	
Tracy Phillips	member - CS & KT	X	
Roxanna Flint	member - CS & KT	X	
ISAAC SHANE	member Crow Tribe		
Mary A Shane	" " "	X	
Alice Mae Forge	" " "	X	
Pius Stone	" " "	X	
David Bravo	Crow - member	X	
Sandra Other Medicine	Crow - member	X	
Theresa Gun Shows	Crow - member	X	
Cyanita Stands Warning	Crow - member	X	
Latonna Big Lake	Crow Tribal member	X	
Charlene M. Laverdure	Crow Tribal Member	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB4

DATE 3-16-93 SPONSOR(S) J. Burnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Walt Dupea Box608 Bigfork	Self	✓	
Robb A. Turner		✓	
Arwood D. Stickney		✓	
Tom Allsop	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 4

DATE March 16, 1993 SPONSOR(S) J. Burnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Jasikoff	self	✓	
Russell Jasikoff	self	✓	
Kimberly Jasikoff	self	✓	
PATRICK CHENOVICK	SUPREME COURT		✓
John Rice		✓	
Phyllis Andrea		✓	
Jim Burnett	SD 42	✓	
Ellen Cranston			
L. Jorgenson			
James Johnson	Self	X	
Pascal Rodfer	" Para-legal	X	
Jerry O'Neil	self	X	
Vicky Soderberg	Mt. Big Sky Paralegal Assn.		X
Bill Carter		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. S. 5

DATE March 16 93 SPONSOR(S) J. Burnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill Cotter Missoula Mont		✓	
Robt L Turner		—	
Arwood D. Stickney		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 5

DATE March 16, 1993 SPONSOR(S) J. Burnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Jasenoff	Self	✓	
Russell Jasikoff	Self	✓	
Kimberly Jasikoff	Self	✓	
PATRICK CHENOVICK	SUPREME COURT		✓
John Rice		✓	
Phyllis a Henderson		✓	
Jim Burnett	SD 42		
Ellen Chaussee			
L. Jorgens			
Personal Response	Self - paralegal	X	
Jenny O'Neil	Self	X	
Vicky Soderberg	MT. Big Sky Paralegal Assn.		X
John ..			
Tom Allen	Self	X	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 242

DATE March 16, 1993 SPONSOR(S) J. Burnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PATRICK CHENOVICK	SUPREME COURT		✓
John Rice		✓	
Phyllis A. dAndrea		✓	
[illegible]			
[illegible]			
Paul Rostad	Self - Paralegal	✓	
Jerry O'Neil	self	✓	
Vicky Soderberg	Mt. Big Sky Paralegal Assn.		X
Walt Dupea PO Box 608 Bigfork		✓	
Bill Carter Missoula		✓	
Arwood D. Stickney		✓	
Robert Turner		✓	
Tom Allen	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 25, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: None
Executive Action: SB 392, SB 4, SB 5, SB 242, SB 153, SB 368 SB 179, SB 371, SB 260, SJR 15, SB 357

EXECUTIVE ACTION ON SB 392

(continuation from 3/24/93 executive action)

Motion: **REP. HOWARD TOOLE MOVED SB 392 BE CONCURRED IN.**

Motion/Vote: **REP. LIZ SMITH** moved an amendment to strike section 1 from the bill. Motion carried 14-4 with **CHAIRMAN FAGG, REPS. BROOKE, TOOLE** and **WYATT** voting no.

Discussion:

REP. RICE explained he is especially concerned with amendment number 5 regarding the Montana Lottery. He said if the Lottery failed to make the connection between someone who had won the lottery and had a child support obligation, that could be used against the lottery for payment.

Motion/Vote: **REP. RICE** moved to strike on page 2, line 21 the words, ", after a good faith effort to do so." Motion carried unanimously 18-0.

Motion/Vote: **REP. HOWARD TOOLE** moved to amend page 9, line 3 following the words "provide support" insert the words "under a court or administrative order"; and after the words "6 months" insert the words "or more." Motion carried unanimously 18-0.

Motion/Vote: **REP. VIVIAN BROOKE** moved amendments 1, 6, 7, 8 and 9 (see standing committee report). Motion carried unanimously.

Motion/Vote: **REP. WHALEN** moved to amend page 8, lines 10 through 13 by striking "in" on line 10 through the end of line 13. Motion carried 17-1 with **CHAIRMAN FAGG** voting no.

Vote: **SB 392 BE CONCURRED IN AS AMENDED.** Motion carried 11-7 with **CHAIRMAN FAGG, REPS. BERGMAN, BROOKE, CLARK, GRIMES, McCULLOCH, RICE, RUSSELL, SMITH, TOOLE** and **WYATT** voting yes. **REP. LIZ SMITH** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 4

Motion/Vote: **REP. WHALEN MOVED TO TABLE SB 4.** Motion carried 16-2 with **REPS. VOGEL and SMITH** voting no.

EXECUTIVE ACTION ON SB 5

Motion/Vote: **REP. WHALEN MOVED TO TABLE SB 5.** Motion carried 17-1 with **REP. WYATT** voting no.

EXECUTIVE ACTION ON SB 242

Motion/Vote: **REP. WHALEN MOVED TO TABLE SB 242.** Motion carried 15-3 with **REPS. VOGEL, CLARK and SMITH** voting no.

EXECUTIVE ACTION ON SB 153

Motion: **REP. RICE** moved an amendment to strip off the Senate amendment and put the fines back to the level with which the bill was introduced.

Discussion:

CHAIRMAN FAGG opposed the amendment. He suggested two options. One option would be to raise the fine up to $500 or $1,000 to give the judge that discretion. But in really grievous cases, judges will put on a larger fine. Or in option 2, **CHAIRMAN FAGG** would like the judge to suspend part of the $500 or $1,000 fine. He would like to see judicial discretion. It is **CHAIRMAN FAGG'S** opinion that a $250 fine will not prevent many people from getting insurance, because it's going to cost them two or three times that to get insurance.

REP. BROOKE asked **REP. RICE** if the second part of the amendment the Senate added was so that part of that sentence could not be suspended. **REP. RICE** explained that, currently, the fine for offense of this nature, no matter what offense it is, the first offense fine is not less than $250 and not more than $500 with no restrictions on whether the court can suspend the fine. What is happening here is that courts are suspending a lot of these fines. The bill, as introduced, is on a graduated scale; first offense is $250, second offense is $350, and third offense is $500. The provision on page 11, lines 18-20 says that the court may suspend the fines only upon determination that the defender is or will be unable to pay the fine. It has made it much more difficult, but not impossible, for a court to suspend those fines. On page 10, the Senate raised the fine from $250 to $500 to $750 to $1,000, and **REP. RICE** thinks these fines have gone too far. **REP. RICE** also disclosed that regarding the jail time, the Senate raised the sentence from 10 to 30 days, and **REP. RICE** included in his amendment to put the bill back to the way it was introduced.

Vote: The question was called on **REP. RICE'S** amendment to revert back to the bill the way it was introduced. Motion carried 13-5 with **CHAIRMAN FAGG, REPS. BERGMAN, CLARK, SAYLES** and **VOGEL** voting no.

Motion: **REP. BIRD** moved an amendment to delete the Senate language on page 11, lines 2,3, and 4 and go back to the original language that begins on page 10, line 25 through and page 11, line 2.

Discussion:

CHAIRMAN FAGG suggested to insert after immediate family, "or authorized driver."

Motion: **REP. BIRD** moved a substitute amendment to insert on page 11, line 4, after immediate family: "or authorized driver."

Vote: The question was called on **REP. BIRD'S** amendment. Motion carried 16-2 with **REPS. WYATT** and **SAYLES** voting no.

Motion/Vote: **REP. WHALEN** moved an amendment. **EXHIBIT 1** Motion failed by a vote of 14-4 with **REPS. TOOLE, McCULLOCH, RUSSELL** and **WHALEN** voting yes.

Motion: **REP. BROWN** moved to strike section 4 from the bill. This would put the bill back to its original language: once a year people would sign a statement attesting that the car is insured.

Discussion:

REP. JODY BIRD reiterated that if section 4 is stricken from the bill, lines 22 through 25 on page 8, then lines 1 and 2 on page 9 will still be in effect because they are in HB 336 which includes the identical language. **Mr. MacMaster** explained that SB 153 and HB 336 are identical with respect to the amendments to section 4.

REP. BIRD said the county treasurers asked her to carry this bill. They would like people to sign, on their motor vehicle registration receipt, a message stating that the driving person knows it is illegal to be driving his car without motor vehicle insurance.

REP. RICE mentioned that the language on page 9, lines 3-7 was stricken because that was language currently in the law regarding a person's signature on his motor vehicle registration. It shouldn't have been struck from the 1991 bill, which passed regarding registration by mail, because the legislature deleted the part of signing off certifying insurance by mail. This session is making it consistent for the person who goes downtown to pick up his registration.

REP. BROWN withdrew his amendment.

Motion: **REP. BIRD MOVED SB 153 BE TABLED.**

Discussion:

REP. WHALEN said this bill isn't going to make insurance anymore affordable or available, and it's not going to solve the problem of uninsured motorists. It's going to make a lot of uncollected fines and put people in jail.

Motion/Vote: The question was called on the table motion. Motion to table failed 8-10 with **REPS. BROWN, BIRD, McCULLOCH, RUSSELL, SAYLES, WHALEN, WINSLOW** and **WYATT** voting yes.

The Chairman announced that, without objection from the committee, the vote would be reversed from **TO TABLE** vote of 8-10 to **DO PASS** vote of 10-8. **REP. RICE** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 368

Motion: REP. BROWN MOVED SB 368 BE CONCURRED IN.

Motion: REP. TOOLE moved an amendment. **EXHIBIT 2** He said this bill would only address misdemeanors; the Confederated Salish and Kootenai Tribe (CSKT) have more than enough resources to handle misdemeanors in court.

REP. WINSLOW asked about the intention of the CSKT if this bill were to not pass this session. **Majel Bird, prosecuting attorney for the Tribe**, explained that tribal members feel they are one of the most progressive tribes in the nation, and it's ironic that they don't have the basic, simple jurisdiction of misdemeanors over Indian people that all other tribes appreciate. As an alternative, under the Indian Civil Rights Act of 1968, they have the consent of the state legislature first to retrocede. If the state doesn't give their consent, they will seek further assistance from Congress.

CHAIRMAN FAGG asked **Ms. Bird** what percentage of the reservation is in Lake County as opposed to the three other surrounding counties. **Ms. Bird** said probably 60 percent of the reservation is in Lake County.

REP. BILL TASH asked **Ms. Bird** with regards to the reservations in the United States, how many tribes have retroceded. **Ms. Bird** said that approximately 160 tribes have retroceded since 1968. These tribes have followed the same procedure enacted in their states as the CSKT has followed in Montana.

REP. ELLEN BERGMAN asked **Ms. Bird** why the CSKT want to isolate themselves from the rest of the state and the people they live with. **Ms. Bird** explained that every government has its right to set laws in its own territorial government. Indian nations are a government within themselves, a sovereign nation and they want that right.

CHAIRMAN FAGG said he will vote against the bill because he learned that 60 percent of the reservation is in Lake County. The Lake County Commissioners are opposed to this bill, the Lake County Sheriff is opposed to the bill and will be directly involved in law enforcement, and the Lake County attorney opposed the bill. **CHAIRMAN FAGG** doesn't think the legislature should get too intertwined in such an intensely, local and emotional issue without full cooperation from all segments of the affected local residents. What **CHAIRMAN FAGG** would like to see is true cooperation over the next two years between Lake County

commissioners, sheriff, the CSKT and other area residents as well as the other counties that are not as affected. **CHAIRMAN FAGG** is disappointed that it took five months for the CKST to respond to the offer made by Lake County commissioners.

REP. WINSLOW said this is a very difficult and unique issue. She would like to see cooperation rather than proclamation. She would like to see a resolution introduced by the end of the session to encourage and schedule discussion on the issue. Then, if in two years, nothing has transpired, she would be willing to vote in favor of this legislation.

Motion: REP. WINSLOW MADE A SUBSTITUTE MOTION THAT SB 368 BE NOT CONCURRED IN.

Discussion:

REP. JODY BIRD said she has some concerns regarding the bill before she can support it. On page three, line 25, and continuing to page 4, lines 1-4 it says, "Confederated Salish and Kootenai Tribes of exclusive adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members." **REP. BIRD** asked, if the tribes are granted exclusive adjudicatory jurisdiction, who can Native American people appeal to if they don't like the decision made in the Salish and Kootenai court. **Ms. Bird** said the Tribe would appeal in appellate court; if they do not get any results from appellate court, they would go on to federal court.

REP. BIRD asked **Ms. Bird** what is considered a "lesser felony." **Ms. Bird** related that lesser felonies have not been specifically outlined; however, they would most likely be domestic abuse, DUIs, and types of crimes that are not necessarily involved in serious bodily injury. **Ms. Bird** added that **Attorney General Mazurek** and **Governor Racicot** will make that decision and answer that question for the committee.

Vote: The motion to adopt **REP. TOOLE'S** amendment carried unanimously 18-0.

Vote: SB 368 BE NOT CONCURRED IN AS AMENDED. Motion carried 10-8 with **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH,** and **WINSLOW** voting yes.

EXECUTIVE ACTION ON SB 179

Motion: REP. WHALEN MOVED SB 179 BE TABLED.

Discussion:

REP. WHALEN said in checking with private, not-for-profit organizations, these types of organizations have to serve a profit motive that takes away from the ability to really do what the state wants. He believes the non-profit organizations are doing a good job, and he'd like to see them stay that way.

REP. BROWN concurred that Butte has one of the most successful not-for-profit, community-based Pre-Release Centers (BPRC) in Montana, and it's been operated exceptionally well in this arena. The BPRC is concerned that if this legislation passes, it will jeopardize their ability to continue to perform in the fashion they have done so in the past. **REP. BROWN** hopes the committee will support the resolution.

CHAIRMAN FAGG addressed the need for pre-release centers. He said this bill will help meet that need when private companies contact this state to build these centers. Obviously, the state corrections department is moving towards pre-release centers as opposed to lock-up facilities in prisons. **CHAIRMAN FAGG** supports that, but he also added the private sector needs a chance to help the state and work hand-in-hand to meet this need.

Vote: SB 179 BE TABLED. Motion failed 7-11 with **REPS. BROWN, BIRD, BROOKE, McCULLOCH, RUSSELL, WHALEN** and **WYATT** voting yes.

Motion: REP. WHALEN MOVED SB 179 BE CONCURRED IN.

Discussion:

Motion/Vote: CHAIRMAN FAGG moved an amendment to strike the "whereas" section from the bill entirely because it's illegal. The motion passed 14-4 with **REPS. WHALEN, BROOKE, McCULLOCH** and **BROWN** voting no.

REP. McCULLOCH said the committee is adding more and more to the FTE account, and the people of Montana are going to have to live with that.

REP. BROWN observed that getting halfway homes accepted into communities has been a difficult process, and a not-for-profit board of directors encompasses a broad-based community group that cares about that community and what happens to the people staying at the pre-release center. **REP. BROWN** believes this situation better integrates these people into the community. He has a major concern about private companies coming into a community without any appreciation for what the local people care about. He doesn't think this is going to work. There's going to be a huge cry from the public if the legislature lets this kind of legislation continue. **REP. BROWN** is opposed to the bill and supports the table motion.

Motion/Vote: **SB 179 BE CONCURRED IN AS AMENDED.** Motion failed on a 9-9 tie with **CHAIRMAN FAGG, REPS. BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH** and **WINSLOW** voting yes.

EXECUTIVE ACTION ON SB 371

Motion/Vote: **REP. VOGEL** moved an amendment. See Standing Committee Report. Motion carried 18-0.

Motion/Vote: **REP. RICE MOVED SB 371 BE TABLED.** Motion carried 13-5 with **CHAIRMAN FAGG, REPS. VOGEL GRIMES, McCULLOCH,** and **SMITH** voting no.

EXECUTIVE ACTION ON SB 260

Motion/Vote: **REP. SAYLES MOVED SB 260 BE CONCURRED IN.** Motion carried 17-1 with **REP. BROWN** voting no. **REP. WYATT** will carry the bill on the House floor.

EXECUTIVE ACTION ON SJR 15

Motion/Vote: **REP. BROWN MOVED SJR 15 BE CONCURRED IN.** Motion carried 14-4 with **REPS. VOGEL, BERGMAN, CLARK,** and **SMITH** voting no. **REP. RICE** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 357

Motion: **REP. VOGEL MOVED SB 357 BE CONCURRED IN.**

Discussion:

REP. WHALEN said that the intent of the bill, in essence, is that if a person under investigation says something that may incriminate him, whether or not he has an attorney present, that person has waived his right by self-incrimination. **REP. WHALEN** finds it offensive when people try to statutorily change something that is a constitutional right. He is opposed to this bill and will vote against it.

Vote: **SB 257 BE CONCURRED IN.** Motion failed 5-11 with **CHAIRMAN FAGG, REPS. VOGEL, RICE, SAYLES,** and **WINSLOW** voting yes.

The chairman announced that, without objection from the committee, the vote would be reversed from **BE CONCURRED IN** vote of 5-11 to a **DO TABLE** vote of 11-5.

ADJOURNMENT

Adjournment: 12:00 a.m.

Russell Fagg

REP. RUSSELL FAGG, Chairman

Beth Miksche

BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-25-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 392 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. L. Smith

1. Title, lines 5 through 7.
Strike: "ALLOWING" on line 5 through "ORDERS;" on line 7

2. Page 1, lines 13 through 25.
Strike: section 1 in its entirety
Renumber: subsequent sections

3. Page 2, line 21.
Strike: ", AFTER A GOOD FAITH EFFORT TO DO SO,"

4. Page 8, lines 10 through 13.
Strike: "In" on line 10 through end of line 13

5. Page 9, line 3.
Following: "support"
Insert: "under a court or administrative order"
Following: "months"
Insert: "or more"

6. Page 10, line 25.
Following: "made"
Insert: "for the benefit of a child"

7. Page 11, lines 1 and 2.
Following: "53" on line 1
Strike: "for the support or aid of any person"

8. Page 11, line 4.
Strike: "person"
Insert: "child"

9. Page 11, lines 17 through 21.
Strike: "(1)" on line 17 through "(2)" on line 21

Committee Vote:
Yes 11, No 7.

671621SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 153 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. J. Rice

1. Page 10, line 14.
Following: "~~$250~~"
Insert: "not less than $250 or more than"

2. Page 10, line 17.
Strike: "$750"
Insert: "$350"

3. Page 10, line 19.
Strike: "$1,000"
Insert: "$500"

4. Page 10, line 20.
Strike: "30"
Insert: "10"

5. Page 11, line 4.
Following: "FAMILY"
Insert: "or by a person whose operation of that vehicle was authorized by the registered owner"

-END-

Committee Vote:
Yes 10, No 0.

671447SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 368 (third reading copy -- blue) be not concurred in as amended .

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendment read:

1. Page 4, line 23.
Following: "writing."
Insert: "The governor shall confer with affected local governments and residents before issuing a proclamation."

2. Page 5, line 6.
Following: "agree."
Insert: "The governor shall confer with affected local governments and residents before issuing a proclamation."

-END-

Committee Vote:
Yes 8, No 18.

671415SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 260 (third reading copy -- blue) be concurred in .

Signed: _____

Russ Fagg, Chair

Carried by: Rep. Wyatt

Committee Vote:
Yes 17, No 1.

671454SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Joint Resolution 15 (third reading copy -- blue) be concurred in .

Signed: _____
Russ Fagg, Chair

Carried by: Rep. J. Rice

Committee Vote:
Yes 14, No 4.

671456SC.Hss

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 392 **NUMBER** 18

MOTION: Motion to pass SB392 carries 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith	✓	
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	11	7

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB4 **NUMBER** 18

MOTION: Motion to table SB4 carried 16-2

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	16	2

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-25-93 BILL NO. SB5 NUMBER 18

MOTION: Motion to table carried 17-1

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 242 **NUMBER** 18

MOTION: Motion to table SB 242 passed 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-25-93 BILL NO. SB 153 NUMBER 18

MOTION: Motion to pass carries 10-8
(Motion was reversed from a 10-8 table motion)

NAME	~~AYE~~ NO	~~NO~~ Aye
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	8	10

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 368 **NUMBER** 18

MOTION: Motion to not pass carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 179 **NUMBER** 18

MOTION: Motion to pass fails on a 9-9-4E
Bill is in Limbo

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	9	9

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 371 **NUMBER** 15

MOTION: Motion to table passes 13-5

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	13	5

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SJR-15 **NUMBER** 18

MOTION: Motion to pass carries 14-4

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	14	4

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 3-25-93 **BILL NO.** SB 357 **NUMBER** 18

MOTION: Motion to pass fails 5-11. Bill has been reversed 11-5 to a table motion. * Bill is tabled 11-5.

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
		✓
	5	11

EXHIBIT 1
DATE 3-25-93
SB 153

Amendments to Senate Bill No. 153
Third Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
March 16, 1993

1. Title, line 12.
Strike: "AND"
Insert: "ALLOWING A DIRECT SUIT AGAINST AN INSURER IF A CLAIM IS OR MAY BE COVERED BY MOTOR VEHICLE LIABILITY INSURANCE SOLD BY THE INSURER;"

2. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 14, line 19.
Following: line 18
Insert: "NEW SECTION. **Section 8. Direct suit against a defendant's motor vehicle liability insurer -- evidence of insurance.** (1) In a civil proceeding in which a claim or claims against a defendant are or may be covered by motor vehicle liability insurance, the insurance company is a real party in interest and must be joined as an additional party defendant.

(2) Evidence of the amount and coverage of the liability insurance is admissible and must be addressed in the jury instructions.

NEW SECTION. **Section 9. Applicability.** [Section 8] applies to claims arising after [the effective date of this act]."

EXHIBIT #2
DATE 3-25-93
SB 368

AMENDMENT TO SB 368

On page 4, line 16, after the period, INSERT the following: The Governor shall confer with affected local governments and residents prior to issuing a proclamation.